

[Second Reprint]

SENATE, No. 2557

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 14, 2018

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senator Greenstein

SYNOPSIS

Concerns stop-work orders related to prevailing wage and construction worker employment.

CURRENT VERSION OF TEXT

As amended by the General Assembly on January 31, 2019.



(Sponsorship Updated As Of: 12/18/2018)

1 AN ACT concerning the issuing of stop-work orders ¹【for failure to
 2 pay prevailing wage rates and】 ¹, amending P.L.1963, c.150 ¹,
 3 and supplementing P.L.2007, c.114 (C.34:20-1 et seq.)¹.
 4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 6 *of New Jersey:*
 7

8 1. Section 11 of P.L.1963, c.150 (C.34:11-56.35) is amended to
 9 read as follows:

10 11. (a) Any employer who willfully hinders or delays the
 11 commissioner in the performance of his duties in the enforcement of
 12 this act, or fails to make, keep, and preserve any records as required
 13 under the provisions of this act, or falsifies any such record, or
 14 refuses to make any such record accessible to the commissioner
 15 upon demand, or refuses to furnish a sworn statement of such record
 16 or any other information required for the proper enforcement of this
 17 act to the commissioner upon demand, or pays or agrees to pay
 18 wages at a rate less than the rate applicable under this act or
 19 otherwise violates any provision of this act or of any regulation or
 20 order issued under this act shall be guilty of a disorderly persons
 21 offense and shall, upon conviction therefor, be fined not less than
 22 \$100.00 nor more than \$1,000 or be imprisoned for not less than 10
 23 nor more than 90 days, or by both such fine and imprisonment.
 24 Each week, in any day of which a worker is paid less than the rate
 25 applicable to him under this act and each worker so paid, shall
 26 constitute a separate offense.

27 (b) As an alternative to or in addition to any other sanctions
 28 provided by law for violations of any provision of P.L.1963,
 29 c.150 (C.34:11-56.25 et seq.), when the Commissioner of Labor and
 30 Workforce Development finds that an employer has violated that
 31 act, the commissioner is authorized to assess and collect
 32 administrative penalties, up to a maximum of \$2,500 for a first
 33 violation and up to a maximum of \$5,000 for each subsequent
 34 violation, specified in a schedule of penalties to be promulgated as a
 35 rule or regulation by the commissioner in accordance with the
 36 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
 37 seq.). When determining the amount of the penalty imposed because
 38 of a violation, the commissioner shall consider factors which
 39 include the history of previous violations by the employer, the
 40 seriousness of the violation, the good faith of the employer and the
 41 size of the employer's business. No administrative penalty shall be
 42 levied pursuant to this section unless the Commissioner of Labor
 43 and Workforce Development provides the alleged violator with
 44 notification of the violation and of the amount of the penalty by

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
 not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted December 10, 2018.

²Assembly floor amendments adopted January 31, 2019.

1 certified mail and an opportunity to request a hearing before the
2 commissioner or his designee within 15 days following the receipt
3 of the notice. If a hearing is requested, the commissioner shall issue
4 a final order upon such hearing and a finding that a violation has
5 occurred. If no hearing is requested, the notice shall become a final
6 order upon expiration of the 15-day period. Payment of the penalty
7 is due when a final order is issued or when the notice becomes a
8 final order. Any penalty imposed pursuant to this section may be
9 recovered with costs in a summary proceeding commenced by the
10 commissioner pursuant to the "Penalty Enforcement Law of 1999,"
11 P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine
12 or penalty pursuant to this section shall be applied toward
13 enforcement and administration costs of the Division of Workplace
14 Standards in the Department of Labor and Workforce Development.

15 (c) When the Commissioner of Labor and Workforce
16 Development finds that the employer has violated provisions of
17 P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may
18 refer the matter to the Attorney General or his designee for
19 investigation and prosecution. Nothing in this subsection shall be
20 deemed to limit the authority of the Attorney General to investigate
21 and prosecute violations of the New Jersey Code of Criminal
22 Justice, nor to limit the commissioner's ability to refer any matter
23 for criminal investigation or prosecution.

24 (d) If ¹[an employer continues to violate] the commissioner
25 makes an initial determination that an employer has violated¹ the
26 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) by paying
27 wages at rates less than the rates applicable under that act ¹[after a
28 final order assessing a penalty for the violation is issued pursuant to
29 subsection (b) of this section] ,whether or not the commissioner
30 refers the matter to the Attorney General or other appropriate
31 prosecutorial authority for investigation or prosecution pursuant to
32 subsection (c) of this section¹ , the commissioner may immediately
33 issue a stop-work order to cease all business operations at every site
34 where the violation has ¹[continued] occurred¹. ²The stop-work
35 order may be issued only against the employer found to be in
36 violation or non-compliance. If a stop-work order has been issued
37 against a subcontractor pursuant to this subsection, the general
38 contractor shall retain the right to terminate the subcontractor from
39 the project.² The stop-work order shall remain in effect until the
40 commissioner issues an order releasing the stop-work order upon
41 finding that the employer has agreed to pay wages at the required
42 rate and has paid any wages due and any penalty ¹[assessed under
43 this section] deemed satisfactory to the commissioner¹. As a
44 condition for release from a stop-work order, the commissioner may
45 require the employer to file with the department periodic reports for
46 a probationary period that shall not exceed two years that
47 demonstrate the employer's continued compliance with the

1 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). The
2 commissioner may assess a civil penalty of \$5,000 per day against
3 an employer for each day that it conducts business operations that
4 are in violation of the stop-work order. That penalty shall be
5 collected by the commissioner in a summary proceeding in
6 accordance with the "Penalty Enforcement Law of 1999,"
7 P.L.1999, c.274 (C.2A:58-10 et seq.).
8 (cf: P.L.2003, c.276, s.1)

9
10 ¹2. (New section) a. With respect to any individual regarded
11 as an employee under the provisions of section 4 of P.L.2007, c.114
12 (C.34:20-4), the Commissioner of Labor and Workforce
13 Development and any agent of the commissioner, upon receipt of a
14 complaint or through a routine investigation for a violation of any
15 wage and hour law or R.S.34:15-79, or a failure to meet obligations
16 as provided in R.S.43:21-7 and R.S.43:21-14, is authorized to enter,
17 during usual business hours, the place of business or employment of
18 any employer of the individual to determine compliance with the
19 wage and hour laws, R.S.34:15-79, R.S.43:21-7, or R.S.43:21-14,
20 and for that purpose may examine payroll and other records and
21 interview employees, call hearings, administer oaths, take testimony
22 under oath and take depositions.

23 b. The commissioner may issue subpoenas for the attendance
24 of witnesses and the production of books and records. Any
25 employer or agent of the employer who willfully fails to furnish
26 time and wage records as required by law to the commissioner or
27 agent of the commissioner upon request, or who refuses to admit the
28 commissioner or agent to the place of employment of the employer,
29 or who hinders or delays the commissioner or agent in the
30 performance of duties in the enforcement of this section, may be
31 fined not less than \$1,000 and shall be guilty of a disorderly persons
32 offense. Each day of the failure to furnish the time and wage
33 records to the commissioner or agent shall constitute a separate
34 offense, and each day of refusal to admit, of hindering, or of
35 delaying the commissioner or agent shall constitute a separate
36 offense.

37 c. (1) If the commissioner determines, after either an initial
38 determination as a result of an audit of a business or an
39 investigation pursuant to subsection a. of this section, that an
40 employer is in violation of any wage and hour law or of R.S.34:15-
41 79, or has failed to meet obligations as provided in R.S.43:21-7 or
42 R.S.43:21-14, the commissioner may issue a stop-work order
43 against the employer requiring cessation of all business operations
44 of the employer at the specific place of business or employment in
45 which the violation exists. The stop-work order may be issued only
46 against the employer found to be in violation or non-compliance. ²If
47 a stop-work order has been issued against a subcontractor pursuant
48 to this subsection, the general contractor shall retain the right to

1 terminate the subcontractor from the project.² The order shall be
2 effective when served upon the employer at the place of business
3 or, for a particular employer worksite, when served at that worksite.
4 The order shall remain in effect until the commissioner issues an
5 order releasing the stop-work order upon finding that the employer
6 has come into compliance and has paid any penalty deemed to be
7 satisfactory to the commissioner, or after the commissioner
8 determines, in a hearing held pursuant to paragraph (2) of this
9 subsection, that the employer did not commit the act on which the
10 order was based. The stop-work order shall be effective against any
11 successor entity engaged in the same or equivalent trade or activity
12 that has one or more of the same principals or officers as the
13 corporation, partnership or sole proprietorship against which the
14 stop-work order was issued.

15 (2) An employer who is subject to a stop-work order shall have
16 the right to appeal to the commissioner. The contractor may notify
17 the Director of the Division of Wage and Hour Compliance of its
18 request for an opportunity to be heard and contest the stop work
19 order in writing within 72 hours of its receipt of the notification.

20 Within seven business days of receipt of the notification from the
21 contractor, the director shall grant the contractor a hearing to
22 contest the issuance of a stop work order. The director shall permit
23 the contractor to present evidence at the hearing.

24 The director shall issue a written decision within five business
25 days of the hearing either upholding or reversing the contractor's
26 stop work order. The decision shall include the grounds for
27 upholding or reversing the contractor's stop work order.

28 If the contractor disagrees with the written decision, the
29 contractor may appeal the decision to the commissioner, in
30 accordance with the "Administrative Procedure Act," P.L.1968,
31 c.410 (C.52:14B-1 et seq.).

32 (3) As an alternative to issuing a stop-work order in accordance
33 with paragraph (1) of this subsection, if the commissioner
34 determines, after an investigation pursuant to subsection a. of this
35 section, that an employer is in violation of R.S.34:15-79, the
36 commissioner may provide and transfer all details and materials
37 related to the investigation under this section to the Director of the
38 Division of Workers' Compensation for any enforcement of
39 penalties or stop-work orders the director determines are
40 appropriate.¹

41
42 ¹**[2.] 3.**¹ This act shall take effect immediately.