

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 989

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED FEBRUARY 11, 2021

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SYNOPSIS

“Healthy Terminals Act”; requires certain airport and train station workers to be paid certain wage rates and benefits under "New Jersey Prevailing Wage Act."

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Budget and Appropriations Committee.

(Sponsorship Updated As Of: 3/25/2021)

1 AN ACT concerning prevailing wages and benefits of certain airport
2 and train station workers and amending and supplementing
3 P.L.2005, c.379.
4

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

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

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

18 b. It is further declared that:

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

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

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

32 (cf: P.L.2005, c.379, s.1)
33

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

36 2. As used in this act:

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

40 "Building services" means any cleaning or building maintenance
41 work, including but not limited to sweeping, vacuuming, floor
42 cleaning, cleaning of rest rooms, collecting refuse or trash, window
43 cleaning, engineering, securing, patrolling, or other work in
44 connection with the care, securing, or maintenance of an existing
45 building, except that "building services" shall not include any

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.

1 maintenance work or other public work for which a contractor is
2 required to pay the "prevailing wage" as defined in section 2 of
3 P.L.1963, c.150 (C.34:11-56.26).

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

8 "Prevailing wage for building services and covered airport or
9 related location workers" means the wage and benefit rates
10 designated by the commissioner based on the determinations made
11 by the General Services Administration pursuant to the federal
12 **["Service Contract Act of 1965" (41 U.S.C. s.351 et seq.)]**
13 McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. 6701 et
14 seq.), for the appropriate localities and classifications of building
15 service employees; provided, however, that in no event shall the
16 prevailing wage rate applicable to a covered airport or related
17 location worker on and after September 1, 2021 and every year
18 thereafter be less than the following:

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

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

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

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

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

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

48 "Covered airport or related location employer" means:

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

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

7 “Covered airport or related location employer” shall not include
8 a public agency.

9 “Covered airport or related location worker” means:

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

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

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

22 “Public agency” means:

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

25 (2) the New Jersey Transit Corporation; and

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

27 (cf: P.L.2017, c.178, s.65)

28
29 3. Section 4 of P.L.2005, c.379 (C.34:11-56.61) is amended to
30 read as follows:

31 4. Each contractor and subcontractor shall keep an accurate
32 record showing the name, classification, and actual hourly rate of
33 wages and any benefits paid to each worker employed by him to
34 perform building services pursuant to a State contract or
35 subcontract, and shall preserve those records for two years after the
36 date of payment. **【The record】** Each covered airport or related
37 location employer shall keep an accurate record showing the name,
38 classification, and actual hourly rate of wages and any benefits paid
39 to each covered airport or related location employee, and shall
40 preserve those records for two years after the date of payment.
41 Such records shall be open at all reasonable hours to inspection by
42 the Director of the Division of Purchase and Property and the
43 commissioner.

44 (cf: P.L.2005, c.379. s.4)

45
46 4. Section 5 of P.L.2005, c.379 (C.34:11-56.62) is amended to
47 read as follows:

1 5. Any worker paid less than the prevailing wage for building
2 services and covered airport or related location workers to which
3 the worker is entitled by the provisions of this act may recover in a
4 civil action the full amount of the prevailing wage for building
5 services and covered airport or related location workers less any
6 amount actually paid to the worker by the employer together with
7 any costs and reasonable attorney's fees allowed by the court, and
8 an agreement between the worker and the employer to work for less
9 than the prevailing wage for building services and covered airport
10 or related location workers shall not be a defense to the action. The
11 worker shall be entitled to maintain an action for and on behalf of
12 the worker or other workers similarly situated and the worker or
13 workers may designate an agent or representative to maintain such
14 actions for and on behalf of all workers similarly situated. At the
15 request of any worker paid less than the prevailing wage for
16 building services and covered airport or related location workers
17 required under the provisions of this act, the commissioner may
18 take an assignment of the wage claim in trust for the assigning
19 worker or workers and may bring any legal action necessary to
20 collect the claim, and the employer shall be required to pay any
21 costs and such reasonable attorney's fee as are allowed by the court.
22 (cf: P.L.2005, c.379, s.5)

23

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

26 6. The commissioner shall have the authority to:

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

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

47 c. require from such contractor or subcontractor, or covered
48 airport or related location employer, full and correct statements in

1 writing, including sworn statements, with respect to wages, hours,
2 names, addresses, and other information pertaining to the contractor
3 or subcontractor's workers, or covered airport or related location
4 workers, and their employment as the commissioner may deem
5 necessary or appropriate; and

6 d. require any contractor or subcontractor, or covered airport or
7 related location employer, to file, within 10 days of receipt of a
8 request, any records enumerated in subsections b. and c. of this
9 section, sworn as to their validity and accuracy, If the contractor or
10 subcontractor fails to provide the requested records within 10 days,
11 the State Treasurer may immediately withhold from payment to the
12 employer up to 25% of the amount, not to exceed \$100,000, to be
13 paid to the employer under the terms of the contract pursuant to
14 which the building services work is being performed. The amount
15 withheld shall be immediately released upon receipt by the State
16 Treasurer of a notice from the commissioner indicating that the
17 request for records has been satisfied.

18 (cf: P.L.2005, c.379, s.6)

19

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

22 7. Any contractor or subcontractor, or covered airport or
23 related location employer, who willfully hinders or delays the
24 commissioner in the performance of the commissioner's duties in
25 the enforcement of this act, or fails to make, keep, and preserve any
26 records as required under the provisions of this act, or falsifies any
27 such record, or refuses to make any such record accessible to the
28 commissioner upon demand, or refuses to furnish a sworn statement
29 of such record or any other information required for the proper
30 enforcement of this act to the commissioner upon demand, or pays
31 or agrees to pay wages at a rate less than the rate applicable under
32 this act or otherwise violates any provision of this act or of any
33 regulation or order issued under this act shall be guilty of a
34 disorderly persons offense and shall, upon conviction therefor, be
35 fined not less than \$100.00 nor more than \$1,000 or be imprisoned
36 for not less than 10 nor more than 90 days, or by both such fine and
37 imprisonment. Each week, in any day of which a worker is paid
38 less than the rate applicable to that worker under this act and each
39 worker so paid, shall constitute a separate offense.

40 As an alternative to or in addition to any other sanctions
41 provided by law for violations of any provision of this act, if the
42 commissioner finds that a contractor or subcontractor, or covered
43 airport or related location employer, has violated the act, the
44 commissioner is authorized to assess and collect administrative
45 penalties, up to a maximum of \$250 for a first violation and up to a
46 maximum of \$500 for each subsequent violation, specified in a
47 schedule of penalties to be promulgated as a rule or regulation by
48 the commissioner in accordance with the "Administrative Procedure

1 Act," P.L.1968, c.410 (C. 52:14B-1 et seq.). When determining the
2 amount of the penalty imposed because of a violation, the
3 commissioner shall consider factors which include the history of
4 previous violations by the contractor or subcontractor, or covered
5 airport or related location employer, the seriousness of the
6 violation, the good faith of the contractor or subcontractor, or
7 covered airport or related location employer, and the size of the
8 contractor's or subcontractor's, or covered airport or related location
9 employer's, business. No administrative penalty shall be levied
10 pursuant to this section unless the commissioner provides the
11 alleged violator with notification of the violation and of the amount
12 of the penalty by certified mail and an opportunity to request a
13 hearing before the commissioner or the commissioner's designee
14 within 15 days following the receipt of the notice. If a hearing is
15 requested, the commissioner shall issue a final order upon such
16 hearing and a finding that a violation has occurred. If no hearing is
17 requested, the notice shall become a final order upon expiration of
18 the 15-day period. Payment of the penalty shall be due when a final
19 order is issued or when the notice becomes a final order. Any
20 penalty imposed pursuant to this section may be recovered with
21 costs in a summary proceeding commenced by the commissioner
22 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
23 c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty
24 pursuant to this section shall be applied toward enforcement and
25 administration costs of the Division of Workplace Standards in the
26 Department of Labor and Workforce Development.
27 (cf: P.L.2005, c.379, s.7)

28

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

31 8. As an alternative to any other sanctions or in addition
32 thereto, herein or otherwise provided by law for violation of this
33 act, the commissioner is authorized to supervise the payment of
34 amounts due to workers under this act, and the contractor or
35 subcontractor, or covered airport or related location employer, may
36 be required to make these payments to the commissioner to be held
37 in a special account in trust for the workers, and paid on order of
38 the commissioner directly to the worker or workers affected. The
39 contractor or subcontractor, or covered airport or related location
40 employer shall also pay the commissioner an administrative fee
41 equal to not less than 10% or more than 25% of any payment made
42 to the commissioner pursuant to this section. The amount of the
43 administrative fee shall be specified in a schedule of fees to be
44 promulgated by rule or regulation of the commissioner in
45 accordance with the "Administrative Procedure Act," P.L.1968, c.
46 410 (C. 52:14B-1 et seq.). The fee shall be applied toward
47 enforcement and administration costs of the Division of Workplace

1 Standards in the Department of Labor and Workforce Development.
2 (cf: P.L.2005, c.379, s.8)

3

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

6 9. Any contractor or subcontractor, or covered airport or
7 related location employer, who discharges or in any other manner
8 discriminates against any worker because the worker has made any
9 complaint to the worker's employer, to the State Treasurer or to the
10 commissioner that the worker has not been paid wages in
11 accordance with the provisions of this act, or because the worker
12 has caused to be instituted or is about to cause to be instituted any
13 proceeding under or related to this act, or because the worker has
14 testified or is about to testify in any such proceeding shall be guilty
15 of a disorderly persons offense and shall, upon conviction therefor,
16 be fined not less than \$100 nor more than \$1,000.

17 As an alternative to or in addition to any other sanctions
18 provided by law for violations of any provision of this act, if the
19 commissioner finds that a contractor or subcontractor, or a covered
20 airport or related location employer, has violated the act, the
21 commissioner is authorized to assess and collect administrative
22 penalties, up to a maximum of \$250 for a first violation and up to a
23 maximum of \$500 for each subsequent violation, specified in a
24 schedule of penalties to be promulgated as a rule or regulation by
25 the commissioner in accordance with the "Administrative Procedure
26 Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). When determining the
27 amount of the penalty imposed because of a violation, the
28 commissioner shall consider factors which include the history of
29 previous violations by the contractor or subcontractor, or covered
30 airport or related location employer, the seriousness of the
31 violation, the good faith of the contractor or subcontractor, or
32 covered airport or related location employer, and the size of the
33 contractor's or subcontractor's, or covered airport or related location
34 employer's, business. No administrative penalty shall be levied
35 pursuant to this section unless the commissioner provides the
36 alleged violator with notification of the violation and of the amount
37 of the penalty by certified mail and an opportunity to request a
38 hearing before the commissioner or the commissioner's designee
39 within 15 days following the receipt of the notice. If a hearing is
40 requested, the commissioner shall issue a final order upon such
41 hearing and a finding that a violation has occurred. If no hearing is
42 requested, the notice shall become a final order upon expiration of
43 the 15-day period. Payment of the penalty shall be due when a final
44 order is issued or when the notice becomes a final order. Any
45 penalty imposed pursuant to this section may be recovered with
46 costs in a summary proceeding commenced by the commissioner
47 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
48 c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty

1 pursuant to this section shall be applied toward enforcement and
2 administration costs of the Division of Workplace Standards in the
3 Department of Labor and Workforce Development.

4 (cf: P.L.2005, c.379, s.9)

5

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

16

17 10. (New section) On August 1, 2021 and each August 1
18 thereafter, the commissioner shall designate the supplemental
19 benefits rate and paid leave requirements required under the
20 determinations made by the General Services Administration
21 pursuant to the federal McNamara-O'Hara Service Contract Act of
22 1965 (41 U.S.C. 6701 et seq.). The commissioner shall publicly
23 post the designated supplemental benefits rates and paid leave
24 requirements.

25

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

32

33 12. This act shall take effect immediately.