

[Third Reprint]

SENATE, No. 2557

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 14, 2018

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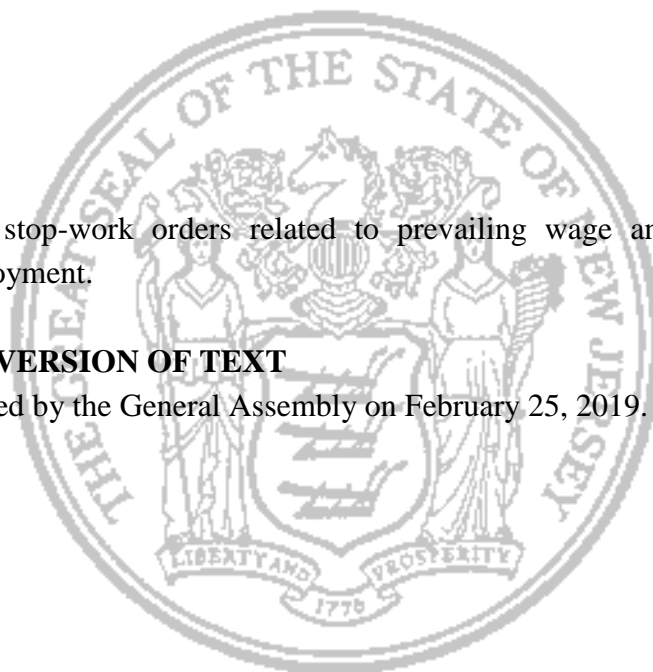
**Senator Greenstein, Assemblymen Space, Wirths, Assemblywoman
Murphy, Assemblymen Verrelli, Zwicker, Egan, Conaway, Houghtaling,
Assemblywoman Downey, Assemblymen Milam, Land, Assemblywoman
Swain and Assemblyman Tully**

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the General Assembly on February 25, 2019.



(Sponsorship Updated As Of: 5/24/2019)

1 AN ACT concerning the issuing of stop-work orders ¹【for failure to
2 pay prevailing wage rates and】 ² 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

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.

³Assembly floor amendments adopted February 25, 2019.

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

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

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

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

10
11 ¹2. (New section) a. ³[With respect to any individual
12 regarded as an employee under the provisions of section 4 of
13 P.L.2007, c.114 (C.34:20-4), the] ³The Commissioner of Labor and
14 Workforce Development and any agent of the commissioner, upon
15 receipt of a complaint or through a routine investigation for a
16 violation of any wage and hour law or R.S.34:15-79, or a failure to
17 meet obligations as provided in R.S.43:21-7 and R.S.43:21-14, is
18 authorized to enter, during usual business hours, the place of
19 business or employment of any employer of the individual to
20 determine compliance with the wage and hour laws, R.S.34:15-79,
21 R.S.43:21-7, or R.S.43:21-14, and for that purpose may examine
22 payroll and other records and interview employees, call hearings,
23 administer oaths, take testimony under oath and take depositions.

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

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

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

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

21 Within seven business days of receipt of the notification from the
22 contractor, the director shall ³[grant the contractor] hold³ a hearing
23 ³to allow the contractor³ to contest the issuance of a stop work
24 order. The director shall permit the contractor to present evidence at
25 the hearing. ³If the director fails to hold a hearing within seven
26 business days of receipt of the notification from the contractor, an
27 administrative law judge shall have the authority to release the stop-
28 work order.³

29 The director shall issue a written decision within five business
30 days of the hearing either upholding or reversing the contractor's
31 stop work order. The decision shall include the grounds for
32 upholding or reversing the contractor's stop work order.

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

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

46
47 ¹[2.] ^{3.1} This act shall take effect immediately.