

New Jersey Prevailing Wage Act

March 17, 2015 | by Timothy Ford

New Jersey Prevailing Wage Act: When Does an Employer Need to Pay Prevailing Wages and What are the Prevailing Wage Rates?

The prevailing wage rate is designed to protect union contractors from non-union competitors who under-bid public works projects. The prevailing wage is a minimum wage rate required to be paid to workers under a public works contract. Frequently, public works contractors confuse whether prevailing wages are required on a project and, if so, the amount required to be paid to its workers. All contractors subject to the Prevailing Wage Act must register with the State of New Jersey. Below are answers to the most common questions on the prevailing wage law:

What projects are subject to prevailing wages?

Prevailing wages must be paid when there is a contract between a public body and a contractor to perform certain "public works" projects. "Public work" is defined as 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.

Does the amount of the public works contract matter?

Yes. Prevailing wages must only be paid to workers when the public works contract for a municipality exceeds \$15,444 and \$2,000 for any other public contract, including boards of education and public utilities.

Does the contract between the public body and contractor need to reference prevailing wages?

Yes. Every public works project subject to a prevailing wage for workers must identify the specific prevailing wage rates and provide that workers will not be paid less than the prevailing wage identified in the contract. In addition, the contract must state that in the event a worker is paid less than the prevailing wage, the public body may terminate the contract and hold the contractor responsible for costs associated with the termination.

Who sets the prevailing wages?

The New Jersey Department of Labor and Workforce Development sets the prevailing wages for each classification of laborer or craftsman by county. A list of prevailing wages may be found at http://lwd.dol.state.nj.us/labor/wagehour/wagerate/prevailing_wage_determinations.html.

What are the consequences of not paying prevailing wages?

An employer who violates the Act is guilty of a disorderly persons offense and subject to fines and possibly imprisonment. The Department of Labor may assess administrative penalties up to \$2,500 for the first violation and \$5,000 for subsequent violations. In addition, penalties include the difference between the wages paid to a worker and the appropriate prevailing wage. Any worker paid less than the prevailing wage may bring a civil claim against his or her employer and, if successful, collect wages, costs and attorney's fees. Each day that an employer pays a worker less than the prevailing wage rate is a separate violation.

What is debarment?

If a contractor is debarred, it will not be able to bid on or perform work on a public contract for three years. When a contractor refuses to pay prevailing wages, the Commissioner of the Department of Labor has the discretion to debar a contractor. The following factors are considered: (1) record of previous violations; (2) previous cases of debarment; (3) frequency of violations from previous cases; (4) magnitude of the violations; (5) existence of outstanding audits; (6) failure to respond to requests for records; and (7) whether false or altered records have been submitted by the contractor. If the Commissioner seeks to debar a contractor, the contractor is entitled notice of the violation and a

hearing upon request. It is recommended that you seek counsel to request a hearing and represent your interests in a debarment hearing.

What happens if the Department of Labor directs me to provide information about public projects my company has performed?

The Department of Labor is authorized to investigate wages an employer has paid to its employees on any project in New Jersey. Frequently, the Department of Labor will request voluminous documents from the contractor within ten days of the contractor's receipt of the requests. If the information is not provided, a subpoena will be issued. Failure to respond may result in the public body withholding 25% of the amount to be paid to the contractor from the public body and supervision of payment to the contractor's employees for ongoing projects. In the event that the contractor does not cooperate, it may be debarred.

If your company has violated the Prevailing Wage Act, it does not necessarily mean you will be debarred. Often, with the assistance of counsel, a settlement can be negotiated with the Department of Labor, which may reduce the penalties and avoid the dreaded debarment. If your company has been sued on the Prevailing Wage Act or received an audit letter from the Department of Labor, contact [Timothy J. Ford, Esq.](#) at Einhorn, Barbarito, Frost & Botwinick, PC