

**EXHIBIT J**

**STATE BUILDING SERVICE CONTRACTS ACT**

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## State Building Service Contracts Act

AN ACT establishing prevailing wage standards for State building service contracts and supplementing chapter 11 of Title 34 of the Revised Statutes.

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### 34:11-56.58 Prevailing wage levels for employees furnishing State building services.

1. It is declared to be the public policy of this State to establish prevailing wage levels for the employees of

contractors and subcontractors furnishing building services for any property or premises owned or leased by the State in order to safeguard the efficiency and general wellbeing of those employees and to protect them and their employers from the effects of serious and unfair competition based on low wage levels which are detrimental to efficiency and well-being.

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**34:11-56.59 Definitions relative to prevailing wage levels for employees furnishing State building services.**

2. As used in this act:

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

"Building services" means any cleaning or building maintenance work, including but not limited to sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, engineering, securing, patrolling, or other work in connection with the care, securing, or maintenance of an existing building, except that "building services" shall not include any maintenance work or other public work for which a contractor is required to pay the "prevailing wage" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

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

"Prevailing wage for building services" means the wage and benefit rates designated by the commissioner based on the determinations made by the General Services Administration pursuant to the federal "Service Contract Act of 1965" (41 U.S.C. s.351 et seq.), for the appropriate localities and classifications of building service employees.

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

"State institutions of higher education," means Rutgers, The State University of New Jersey, the University of Medicine and Dentistry of New Jersey and the New Jersey Institute of Technology, and any of the State colleges or universities established pursuant to chapter 64 of Title 18A of the New Jersey Statutes, but does not include any county college established pursuant to chapter 64A of Title 18A of the New Jersey Statutes.

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**34:11-56.60 Contract to contain provision for prevailing wage, building services rates.**

3. Every contract to furnish building services for any property or premises owned or leased by the State shall contain a provision stating the prevailing wage for building services rates that are applicable to the workers employed in the performance of the contract and shall contain a stipulation that those workers shall be paid not less than the indicated prevailing wage for building services rates. The contract shall provide for annual adjustments of the prevailing wage for building services during the term of the contract, and shall provide that if it is found that any worker employed by the contractor or any subcontractor covered by the contract, has been paid less than the required prevailing wage, the State Treasurer may terminate the contractor or subcontractor's right to proceed with the work, and the contractor and his sureties shall be liable to the State for any excess costs occasioned by the termination.

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**34:11-56.61 Record of employee wages, benefits.**

4. Each contractor and subcontractor shall keep an accurate record showing the name, classification, and actual hourly rate of wages and any benefits paid to each worker employed by him to perform building services pursuant to a State contract or subcontract, and shall preserve those records for two years after the date of payment. The record shall be open at all reasonable hours to inspection by the Director of the Division of Purchase and Property and the commissioner.

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**34:11-56.62 Civil action to recover prevailing wage for building services.**

5. Any worker paid less than the prevailing wage for building services to which the worker is entitled by the

provisions of this act may recover in a civil action the full amount of the prevailing wage for building services less any amount actually paid to the worker by the employer together with any costs and reasonable attorney's fees allowed by the court, and an agreement between the worker and the employer to work for less than the prevailing wage for building services shall not be a defense to the action. The worker shall be entitled to maintain an action for and on behalf of the worker or other workers similarly situated and the worker or workers may designate an agent or representative to maintain such actions for and on behalf of all workers similarly situated. At the request of any worker paid less than the prevailing wage for building services required under the provisions of this act, the commissioner may take an assignment of the wage claim in trust for the assigning worker or workers and may bring any legal action necessary to collect the claim, and the employer shall be required to pay any costs and such reasonable attorney's fee as are allowed by the court.

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#### **34:11-56.63 Authority of commissioner.**

6. The commissioner shall have the authority to:

- a. investigate and ascertain the wages of any employees of a contractor or subcontractor furnishing building services for any property or premises owned or leased by the State;
- b. enter and inspect the place of business or employment of any contractor or subcontractor furnishing building services for any property or premises owned or leased by the State, for the purpose of examining and inspecting any or all books, registers, payrolls, and other records of any such contractor or subcontractor that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment of any employees of such contractor or subcontractor; copy any or all of such books, registers, payrolls, and other records as the commissioner may deem necessary or appropriate; and question the employees of such contractor or subcontractor for the purpose of ascertaining whether the provisions of this act have been and are being complied with;
- c. require from such contractor or subcontractor full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and other information pertaining to the contractor or subcontractor's workers and their employment as the commissioner may deem necessary or appropriate; and
- d. require any contractor or subcontractor to file, within 10 days of receipt of a request, any records enumerated in subsections b. and c. of this section, sworn as to their validity and accuracy, If the contractor or subcontractor fails to provide the requested records within 10 days, the State Treasurer may immediately withhold from payment to the employer up to 25% of the amount, not to exceed \$100,000, to be paid to the employer under the terms of the contract pursuant to which the building services work is being performed. The amount withheld shall be immediately released upon receipt by the State Treasurer of a notice from the commissioner indicating that the request for records has been satisfied.

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#### **34:11-56.64 Violations; fines, penalties.**

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

As an alternative to or in addition to any other sanctions provided by law for violations of any provision of this act, if the commissioner finds that a contractor or subcontractor has violated the act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the contractor or subcontractor, the seriousness of the violation, the good faith of the contractor or subcontractor and the size of the contractor's or subcontractor's business. No administrative penalty shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or the commissioner's designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the

notice shall become a final order upon expiration of the 15-day period. Payment of the penalty shall be due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

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#### **34:11-56.65 Alternative, additional sanctions.**

8. As an alternative to any other sanctions or in addition thereto, herein or otherwise provided by law for violation of this act, the commissioner is authorized to supervise the payment of amounts due to workers under this act, and the contractor or subcontractor may be required to make these payments to the commissioner to be held in a special account in trust for the workers, and paid on order of the commissioner directly to the worker or workers affected. The contractor or subcontractor shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). The fee shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

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#### **34:11-56.66 Retaliation against complaining employer, disorderly persons offense.**

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

As an alternative to or in addition to any other sanctions provided by law for violations of any provision of this act, if the commissioner finds that a contractor or subcontractor has violated the act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the contractor or subcontractor, the seriousness of the violation, the good faith of the contractor or subcontractor and the size of the contractor's or subcontractor's business. No administrative penalty shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or the commissioner's designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty shall be due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

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#### **34:11-56.67 Collective bargaining rights unaffected.**

10. Nothing in this act shall be deemed to interfere with, impede, or in any way diminish the right of workers to bargain collectively through representatives of their own choosing in order to establish wages in excess of any applicable minimum under this act.

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#### **34:11-56.68 Severability.**

11. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the

remainder of the act and the application thereof, to other persons or circumstances shall not be affected thereby.

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#### **34:11-56.69 Rules, regulations.**

12. The commissioner is hereby authorized and empowered to prescribe, adopt, promulgate, rescind and enforce rules and regulations as may be required for the administration and enforcement of the provisions of this act.

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#### **34:11-56.70 Special license authorizing employment at less than prevailing wage for building service rates.**

13. For any occupation for which prevailing wage for building services rates are established by or pursuant to this act, the commissioner or the Director of Wage and Hour Compliance in the Department of Labor and Workforce Development may cause to be issued to any employee, including a learner, apprentice, or student, whose earning capacity is impaired by age or physical or developmental disability or injury, a special license authorizing employment at wages less than the prevailing wage for building services for a period of time as shall be fixed by the commissioner or the Director of Wage and Hour Compliance and stated in the license. Nothing in this section is intended to undermine the purposes of this act.

14. This act shall take effect on the 60th day following enactment and apply to contracts entered or renewed on or after that date.

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### TITLE 12. DEPARTMENT OF LABOR

#### CHAPTER 64. PREVAILING WAGES FOR BUILDING SERVICES

##### SUBCHAPTER 1. GENERAL PROVISIONS

###### **12:64-1.1 Purpose**

The purpose of this chapter is to establish prevailing wage levels for workers employed or engaged by contractors furnishing building services for any property or premises owned or leased by the State in order to safeguard the efficiency and general well-being of those workers and to protect them and the contractors for whom they work from the effects of serious and unfair competition, which is based on low wage levels that are detrimental to efficiency and well-being.

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###### **12:64-1.2 Scope**

(a) This chapter shall apply to contractors who have contracted with the State to furnish building services for any property or premises owned or leased by the State.

(b) This chapter shall apply to building services workers who are employed or engaged by contractors who have contracted with the State to furnish building services for any property or premises owned or leased by the State.

(c) This chapter shall apply to contracts to furnish building services for any property or premises owned or leased by the State that are entered into or renewed by the State on or after March 13, 2006.

(d) This chapter shall not apply to contracts to furnish building services for any property or premises owned or leased by the State that were entered into prior to March 13, 2006 and extended on or after March 13, 2006.

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###### **12:64-1.3 Definitions**

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

"Act" means the State Building Service Contracts Act, P.L. 2005, c. 379, N.J.S.A. 34:11-56.58 et seq., and the rules promulgated in accordance therewith, this chapter.

"Building" includes everything within the outer walls of the building structure, as well as the exterior of those walls, and any front, rear or side portico attached to the building itself.

"Building services" means any cleaning or building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, engineering, securing, patrolling, or other work in connection with the care, securing or maintenance of an existing building. "Building services" shall not include any maintenance work or other public work for which a contractor is required under the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., to pay the "prevailing wage," as that term is defined in N.J.S.A. 34:11-56.26.

"Building services worker" or "worker" means any individual employed or engaged by a contractor to perform building services, pursuant to a State contract, for any property or premises owned or leased by the State.

1. "Building services worker" or "worker" shall include full-time workers, part-time workers, temporary workers and independent contractors.
2. "Building services worker" or "worker" shall not include any employee, including a learner, apprentice, or student, whose earning capacity is impaired by age or physical or developmental disability or injury, to whom the Commissioner has issued a special license authorizing employment at wages less than the prevailing wage for building services for a period of time as shall be fixed by the Commissioner or the Director of Wage and Hour Compliance and stated in the license.

"Certified payroll record" means a payroll record that is attested to by the contractor or the owner of the company doing business as the contractor, or a corporate officer of such company, or an authorized agent of the contractor.

"Commissioner" means the Commissioner of Labor and Workforce Development or his or her duly authorized designee.

"Contract" means those agreements entered into by the State for the principal purpose of furnishing building services. Where building space is leased by the State and the building owner furnishes general janitorial or other building services, the Act does not apply.

"Contracting State agency" means the particular State department, bureau, board, commission, agency or instrumentality, including a State institution of higher education, which enters into a contract with a contractor for the furnishing of building services for any property or premises owned or leased by the State.

"Contractor" means a person, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof, that enters into a contract for the furnishing of building services for any property or premises owned or leased by the State 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.

"Engineering" means the functions ordinarily performed by a "janitor" as that term is defined within the United States Department of Labor's Service Contract Act Directory of Occupations, namely, one who cleans and keeps in an orderly condition factory working areas and washrooms, or premises of an office, apartment house, or commercial or other establishment. Duties involve a combination of the following: sweeping, mopping or scrubbing, and polishing floors; removing chips, trash, and other refuse; dusting equipment, furniture, or fixtures; polishing metal fixtures or trimmings; providing supplies and minor maintenance services; and cleaning lavatories, showers, and restrooms. Excluded from the definition of the term "engineering" are workers who specialize in window washing, housekeeping staff who make beds and change linens as a primary responsibility, workers required to disassemble and assemble equipment in order to clean machinery, and workers who receive additional compensation to maintain sterile facilities or equipment. Also excluded from the definition of the term "engineering" are workers who maintain building infrastructure equipment and machinery, such as, but not limited to, heating, ventilation and air conditioning (HVAC), elevators, boilers, plumbing and electrical systems.

"Extended" means prolonging the duration of an existing contract as provided for and in accordance with the terms of that contract.

"Fringe benefit" means "fringe benefit" as that term is defined and used within the Federal Service Contract Act of 1965, 41 U.S.C. §§ 351 et seq., incorporated herein by reference, as amended and supplemented, and the regulations promulgated by the Secretary of Labor in accordance therewith, 29 CFR Part 4, incorporated herein by reference, as amended and supplemented.

"Leased by the State" means that not less than 55 percent of the property or premises is leased by the State, provided that the portion of the property or premises that is leased by the State measures more than 20,000

square feet.

"Monetary wage" means "monetary wage" as that term is defined and used within the Federal Service Contract Act of 1965, 41 U.S.C. §§ 351 et seq., incorporated herein by reference, as amended and supplemented, and the regulations promulgated by the Secretary of Labor in accordance therewith, 29 CFR Part 4, incorporated herein by reference, as amended and supplemented.

"Renewed" means a new contract entered into by the parties upon expiration or termination of an existing contract.

"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.

"Prevailing wage for building services" means the monetary wage and fringe benefit rates designated by the Commissioner based on the determinations made by the United States General Services Administration pursuant to the Federal Service Contract Act of 1965, 41 U.S.C. §§ 351 et seq., for the appropriate localities and classifications of building services workers.

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

"State institutions of higher education" means Rutgers, the State University of New Jersey, the University of Medicine and Dentistry of New Jersey and the New Jersey Institute of Technology, and any of the State colleges or universities established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes, but does not include any county college established pursuant to Chapter 64A of Title 18A of the New Jersey Statutes.

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

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## **SUBCHAPTER 2. CONTRACTOR AND CONTRACTING STATE AGENCY RESPONSIBILITIES**

### **12:64-2.1 Contract provisions**

(a) The contractor and the contracting State agency shall ensure that each contract entered into between a contractor and a contracting State agency to furnish building services for any property or premises owned or leased by the State shall contain the following provisions:

1. A provision setting forth the prevailing wages for building services that are applicable to the workers employed or engaged in the performance of the contract;
2. A provision stating that the workers employed or engaged in the performance of the contract shall be paid not less than the applicable prevailing wages for building services, as set forth in the contract;
3. A provision requiring annual adjustments to the prevailing wages for building services set forth in the contract; and
4. A provision stating that if any worker employed or engaged by the contractor to furnish building services under the contract has been paid less than the prevailing wages for building services set forth in the contract, the State Treasurer may terminate the contractor's right to proceed with the work and the contractor and its sureties shall be liable to the State for any excess costs occasioned by the termination.

(b) For the purpose of requiring annual adjustments to the prevailing wages for building services in a contract under (a)3 above, the contract shall require that those adjustments be made on the anniversary date of the effective date of the contract.

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### **12:64-2.2 Multiple classes of work**

(a) Where, during a given workweek, a worker performs work in multiple job classifications and two or more "prevailing wages for building services" are applicable to the separate classes of work performed, the contractor must pay the worker the highest of such "prevailing wages for building services" 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 or engaged 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 for building services" to which a worker is entitled for covered work performed during the workweek, the contractor must pay the worker the higher "prevailing wage for building services" 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.

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#### **12:64-2.3 Collective bargaining rights**

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

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#### **12:64-2.4 Records**

(a) Each contractor shall keep an accurate payroll record for each worker performing building services pursuant to a State contract.

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

(c) The records maintained under (a) above shall be open at all reasonable hours to inspection by the Commissioner and the Director of the Division of Purchase and Property within the Department of the Treasury.

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### **SUBCHAPTER 3. INSPECTIONS**

#### **12:64-3.1 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 monetary wages, fringe benefits, hours and other conditions of work for building services workers;
2. Question, privately, any employee or managerial executive of the contractor, including building services workers, to determine whether they are aware of violations of the Act; and
3. Require contractors to submit written statements, including sworn statements, concerning monetary wages, fringe benefits, hours, names, addresses, and other information pertaining to the contractor's workers and their work as the Commissioner may deem necessary or appropriate.

(b) If, within 10 days of a request by the Commissioner, a contractor fails to file the material listed in (a)1 or 3 above, sworn as to its validity and accuracy, the Commissioner may direct the State Treasurer to withhold from the contractor up to 25 percent of the amount, not to exceed \$ 100,000, to be paid to the contractor under the terms of the contract pursuant to which the building services work is being performed.

1. When the contractor complies with the request for records, the Commissioner shall notify the State Treasurer, who shall immediately release the withheld funds.

(c) The contractor shall submit to the contracting State agency, in a form satisfactory to the Commissioner, a certified payroll record on each building services contract.

1. Such record shall be submitted each payroll period within 10 days of the payment of monetary wages or fringe benefits.
2. The contracting State agency shall receive, file, store and make available for inspection by the Commissioner during normal business hours the certified payroll records.

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### **SUBCHAPTER 4. VIOLATIONS, PENALTIES AND FEES**

#### **12:64-4.1 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 the duties of the Commissioner in the enforcement of the Act;
2. Fails to make, keep and preserve any records as required under the provisions of the Act;
3. Falsifies any such record;
4. Refuses to make any such record accessible to the Commissioner upon demand;
5. Refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of the Act to the Commissioner on demand;
6. Pays or agrees to pay monetary wages or fringe benefits at a rate less than the prevailing wage for building services applicable under the Act;
7. Requests, demands, or receives, either for himself or herself or any other person, either before or after a worker is employed or engaged in the performance of building services at a specified rate of wages, the following:
  - i. That such worker forego, pay back, return, donate, contribute or give any part, or all, of his or her monetary wages, fringe benefits, or thing of value, to any person upon the statement, representation or understanding that failure to comply with such request or demand will prevent such worker from procuring or retaining engagement or employment; or
8. Otherwise violates any provision of the Act or of any order issued under the Act.

(b) A contractor who violates any provision of the Act shall be guilty of a disorderly persons offense and shall, upon conviction therefor:

1. Be fined not less than \$ 100.00, nor more than \$ 1,000;
2. Be imprisoned for not less than 10, nor more than 90 days; or
3. Be subject to both the fine and imprisonment.

(c) Each week, in any day of which a worker is paid less than the rate applicable to that worker under the Act and each worker so paid, shall constitute a separate offense.

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#### **12:64-4.2 Administrative penalties**

(a) As an alternative to or in addition to any other sanctions provided for in N.J.A.C. 12:64-4.1, when the Commissioner finds that a contractor has violated the Act, the Commissioner may assess and collect administrative penalties in the amounts that follow:

1. First violation -- not more than \$ 250.00.
2. Second and subsequent violations -- not more than \$ 500.00.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 working days following the receipt of the notice.

1. If a hearing is not requested, the notice shall become a final order upon the expiration of the 15-working day period following receipt of the notice.
2. If a hearing is requested, the Commissioner shall issue a final order upon such hearing and a finding that a violation has occurred.
3. All penalties and fees, along with monetary wages and/or fringe benefits due, shall be paid within 30 days of the date of the final order. Failure to pay such monetary wages and/or fringe benefits, fees and/or penalties shall result in a judgment being obtained in a court of competent jurisdiction.
4. All payments shall be made payable to the "Commissioner of Labor and Workforce Development." All payments shall be made by certified check or money order, or payable in a form suitable to the Commissioner.

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violation(s).

1. The seriousness of the violation;

2. The past history of previous violations by the contractor;
3. The good faith of the contractor;
4. The size of the contractor's business; and
5. Any other factors which the Commissioner deems to be appropriate in determining the penalty to be assessed.

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#### **12:64-4.3 Administrative fees**

(a) The Commissioner may supervise the payment of amounts due to workers under the Act, and the contractor may be required to make these payments to the Commissioner to be held in a special account in trust for the worker, and paid on order of the Commissioner directly to the worker or workers affected.

(b) The contractor shall pay the Commissioner an administrative fee on all payments due to workers pursuant to N.J.S.A. 34:11-56.65.

(c) A schedule of the administrative fees is set forth in Table 4.3(c) below:

Table 4.3(c)

Schedule of Administrative Fees

1. First violation -- 10 percent of the amount of any payment made to the Commissioner pursuant to the Act.
2. Second violation -- 18 percent of the amount of any payment made to the Commissioner pursuant to the Act.
3. Third and subsequent violations -- 25 percent of the amount of any payment made to the Commissioner pursuant to the Act.

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#### **12:64-4.4 Interest**

(a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:

1. When a contractor has unreasonably delayed compliance with an order of the Commissioner to pay monetary wages or fringe benefits owed to a worker;
2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the contractor over an extensive period of time; or
3. Where the Commissioner finds sufficient cause based on the particular case.

(b) Where applicable, interest deemed owed to a worker shall be calculated at the annual rate as set forth in New Jersey Court Rules, R.4:42-11.

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#### **12:64-4.5 Hearings**

(a) No assessment of monetary wages, fringe benefits, fees or penalties shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with written notification of the violation and the amount of the monetary wages, fringe benefits, fees and/or penalties, and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following the receipt of the notice of assessment. All contested cases shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The filing of a request for a hearing regarding monetary wages, fringe benefits, fees or penalties shall not preclude the Commissioner from pursuing other remedies under the Act.

(b) All requests for a hearing shall be reviewed by the Office of Wage and Hour Compliance to determine if the dispute can be resolved at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached or if the review indicates that no settlement conference is warranted, the case shall be forwarded to the Office of Administrative Law for a formal hearing.

(c) The Commissioner shall make the final decision of the Department.

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

(e) If the contractor, or a designated representative thereof, fails to appear at a requested hearing, the Commissioner may, for good cause shown, reschedule a hearing.

(f) If the Commissioner does not authorize such a rescheduled hearing, then the Commissioner shall issue a final agency determination.

(g) Payment of the monetary wages, fringe benefits, fees and/or penalties is due when a final agency determination is issued.

(h) Upon final determination, the monetary wages, fringe benefits, fees and penalties may be recovered with costs in a summary proceeding commenced by the Commissioner.

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#### **12:64-4.6 Discharge or discrimination against worker making complaint**

(a) A contractor who discharges or in any other manner discriminates against any worker because such worker has made any complaint to the contractor, to the contracting State agency, the State Treasurer, or to the Commissioner that the worker has not been paid monetary wages or fringe benefits in accordance with the provisions of the Act, or because such worker has caused to be instituted, or is about to cause to be instituted, any proceeding under or related to the Act, or because such worker has testified or is about to testify in any such proceeding, shall be guilty of a disorderly persons offense and shall, upon conviction therefore, be fined not less than \$100.00, nor more than \$1,000.

(b) As an alternative to, or in addition to, any sanctions imposed under (a) above, the Commissioner may under N.J.S.A. 34:11-56.66 assess and collect administrative penalties as provided for in N.J.A.C. 12:64-4.2.

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