

P.L. 2021, CHAPTER 68, *approved April 29, 2021*
Senate Committee Substitute for
Senate, No. 989

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

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

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

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

23 (1) any otherwise applicable minimum wage rate established
24 through a policy of the Port Authority of New York and New
25 Jersey; and

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

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

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

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

1 “Covered airport or related location” means the Newark Liberty
2 International Airport and the Newark Liberty International Airport
3 Train Station.

4 “Covered airport or related location employer” means:

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

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

11 “Covered airport or related location employer” shall not include
12 a public agency.

13 “Covered airport or related location worker” means:

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

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

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

26 “Public agency” means:

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

29 (2) the New Jersey Transit Corporation; and

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

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

32

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

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

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

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

3 5. Any worker paid less than the prevailing wage for building
4 services and covered airport or related location workers to which
5 the worker is entitled by the provisions of this act may recover in a
6 civil action the full amount of the prevailing wage for building
7 services and covered airport or related location workers less any
8 amount actually paid to the worker by the employer together with
9 any costs and reasonable attorney's fees allowed by the court, and
10 an agreement between the worker and the employer to work for less
11 than the prevailing wage for building services and covered airport
12 or related location workers shall not be a defense to the action. The
13 worker shall be entitled to maintain an action for and on behalf of
14 the worker or other workers similarly situated and the worker or
15 workers may designate an agent or representative to maintain such
16 actions for and on behalf of all workers similarly situated. At the
17 request of any worker paid less than the prevailing wage for
18 building services and covered airport or related location workers
19 required under the provisions of this act, the commissioner may
20 take an assignment of the wage claim in trust for the assigning
21 worker or workers and may bring any legal action necessary to
22 collect the claim, and the employer shall be required to pay any
23 costs and such reasonable attorney's fee as are allowed by the court.
24 (cf: P.L.2005, c.379, s.5)
25

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

28 6. The commissioner shall have the authority to:

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

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

1 c. require from such contractor or subcontractor, or covered
2 airport or related location employer, full and correct statements in
3 writing, including sworn statements, with respect to wages, hours,
4 names, addresses, and other information pertaining to the contractor
5 or subcontractor's workers, or covered airport or related location
6 workers, and their employment as the commissioner may deem
7 necessary or appropriate; and

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

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

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

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

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

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

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

33 8. As an alternative to any other sanctions or in addition
34 thereto, herein or otherwise provided by law for violation of this
35 act, the commissioner is authorized to supervise the payment of
36 amounts due to workers under this act, and the contractor or
37 subcontractor, or covered airport or related location employer, may
38 be required to make these payments to the commissioner to be held
39 in a special account in trust for the workers, and paid on order of
40 the commissioner directly to the worker or workers affected. The
41 contractor or subcontractor, or covered airport or related location
42 employer shall also pay the commissioner an administrative fee
43 equal to not less than 10% or more than 25% of any payment made
44 to the commissioner pursuant to this section. The amount of the
45 administrative fee shall be specified in a schedule of fees to be
46 promulgated by rule or regulation of the commissioner in
47 accordance with the "Administrative Procedure Act," P.L.1968, c.
48 410 (C. 52:14B-1 et seq.). The fee shall be applied toward

1 enforcement and administration costs of the Division of
2 WorkplaceStandards in the Department of Labor and Workforce
3 Development.

4 (cf: P.L.2005, c.379, s.8)

5

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

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

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

1 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
2 c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty
3 pursuant to this section shall be applied toward enforcement and
4 administration costs of the Division of Workplace Standards in the
5 Department of Labor and Workforce Development.
6 (cf: P.L.2005, c.379, s.9)

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

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

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

34
35 12. This act shall take effect immediately.

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