

HOUSE LABOR, VETERANS' AND MILITARY AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 391

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING A PROCESS TO RESOLVE PREVAILING WAGE COMPLAINTS;
INCREASING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 13-4-11 NMSA 1978 (being Laws 1965,
Chapter 35, Section 1, as amended) is amended to read:

"13-4-11. PREVAILING WAGE AND BENEFIT RATES DETERMINED--
MINIMUM WAGES AND FRINGE BENEFITS ON PUBLIC WORKS--WEEKLY
PAYMENT--WITHHOLDING FUNDS.--

A. Every contract or project in excess of sixty
thousand dollars (\$60,000) that the state or any political
subdivision thereof is a party to for construction, alteration,
demolition or repair or any combination of these, including
painting and decorating, of public buildings, public works or

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underscored material = new
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1 public roads of the state and that requires or involves the
2 employment of mechanics, laborers or both shall contain a
3 provision stating the minimum wages and fringe benefits to be
4 paid to various [~~classes~~] classifications of laborers and
5 mechanics, which shall be based upon the wages and benefits
6 that will be determined by the director to be prevailing for
7 the corresponding [~~classes~~] classifications of laborers and
8 mechanics employed on contract work of a similar nature in the
9 state or locality, and every contract or project shall contain
10 a stipulation that the contractor, subcontractor, employer or a
11 person acting as a contractor shall pay all mechanics and
12 laborers employed on the site of the project, unconditionally
13 and not less often than once a week and without subsequent
14 unlawful deduction or rebate on any account, the full amounts
15 accrued at time of payment computed at wage rates and fringe
16 benefit rates not less than those determined pursuant to
17 Subsection B of this section to be the prevailing wage rates
18 and prevailing fringe benefit rates issued for the project.

19 B. Annually, the director shall determine
20 prevailing wage rates and prevailing fringe benefit rates for
21 respective [~~classes~~] classifications of laborers and mechanics
22 employed on public works projects at the same wage rates and
23 fringe benefit rates used in collective bargaining agreements
24 between labor organizations and their signatory employers that
25 govern predominantly similar [~~classes or~~] classifications of

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1 laborers and mechanics for the locality of the public works
2 project and the crafts involved; provided that:

3 (1) if the prevailing wage rates and
4 prevailing fringe benefit rates cannot reasonably and fairly be
5 determined in a locality because no collective bargaining
6 agreements exist, the director shall determine the prevailing
7 wage rates and prevailing fringe benefit rates for the same or
8 most similar [~~class or~~] classification of laborer or mechanic
9 in the nearest and most similar neighboring locality in which
10 collective bargaining agreements exist;

11 (2) the director shall give due regard to
12 information obtained during the director's determination of the
13 prevailing wage rates and the prevailing fringe benefit rates
14 made pursuant to this subsection;

15 (3) any interested person shall have the right
16 to submit to the director written data, personal opinions and
17 arguments supporting changes to the prevailing wage rate and
18 prevailing fringe benefit rate determination; and

19 (4) prevailing wage rates and prevailing
20 fringe benefit rates determined pursuant to the provisions of
21 this section shall be compiled as official records and kept on
22 file in the director's office, and the records shall be updated
23 in accordance with the applicable rates used in subsequent
24 collective bargaining agreements.

25 C. The prevailing wage rates and prevailing fringe

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1 benefit rates to be paid shall be posted by the contractor or
2 person acting as a contractor in a prominent and easily
3 accessible place at the site of the work; [~~and it is further~~]
4 provided that there [~~may~~] shall be withheld from the
5 contractor, subcontractor, employer or a person acting as a
6 contractor so much of accrued payments as may be considered
7 necessary by the director or contracting officer of the state
8 or political subdivision to pay to laborers and mechanics
9 employed on the project the difference between the prevailing
10 wage rates and prevailing fringe benefit rates required by the
11 director to be paid to laborers and mechanics on the work and
12 the wage rates and fringe benefit rates received by the
13 laborers and mechanics and not refunded to the contractor,
14 subcontractor, employer or a person acting as a contractor or
15 the contractor's, [~~subcontractor's~~] subcontractor's,
16 employer's or person's agents.

17 D. Upon request by a person, a contracting agency
18 shall, within twenty days of such request, provide copies of
19 certified weekly payroll records to the requesting person.

20 [~~D.~~] E. Notwithstanding any other provision of law
21 applicable to public works contracts or agreements, the
22 director may, with cause:

23 (1) issue investigative or hearing subpoenas
24 for the production of documents or witnesses pertaining to
25 public works prevailing wage projects; and

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1 (2) attach and prohibit the release of any
2 assurance of payment required under Section 13-4-18 NMSA 1978
3 for a reasonable period of time beyond the time limits
4 specified in that section until the director satisfactorily
5 resolves any probable cause to believe a violation of the
6 Public Works Minimum Wage Act or its implementing rules has
7 taken place.

8 F. A person may file with the director a complaint
9 that a contractor, subcontractor, employer or person acting as
10 a contractor on the project has failed to pay wages or fringe
11 benefits at the rates required by the Public Works Minimum Wage
12 Act. Within thirty days after the filing of the complaint,
13 either party may request in writing a mediation to resolve the
14 complaint.

15 G. The director shall, within thirty days of the
16 filing of the complaint, commence an investigation of the
17 allegations contained in the complaint. The director shall,
18 within seventy-five days after the completion of mediation or,
19 if no mediation is requested, within seventy-five days after
20 the filing of the complaint, make a determination supported by
21 findings of fact and conclusions of law whether there has been
22 an underpayment of wages or fringe benefits or other violation
23 of the Public Works Minimum Wage Act; provided that if the
24 complaint is of a continuing or significantly complex nature or
25 involves multiple projects or job sites, the director may

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1 extend the time in which to make a determination by up to six
2 months by providing written notice and an explanation to all
3 parties of the need to extend the time. Prior to issuing a
4 determination, the director shall provide the contractor,
5 subcontractor, employer or other person against whom the
6 complaint has been filed with an opportunity to respond to the
7 complaint and provide any exculpatory evidence.

8 H. If the director determines that there has been
9 an underpayment of wages or fringe benefits or a violation of
10 the Public Works Minimum Wage Act, the director shall, in the
11 absence of a voluntary resolution by the parties and within
12 thirty days of making that determination, order the withholding
13 of accrued payments as provided in Subsection C of this
14 section.

15 ~~[E-]~~ I. The director shall issue rules necessary to
16 administer and accomplish the purposes of the Public Works
17 Minimum Wage Act."

18 **SECTION 2.** Section 13-4-13 NMSA 1978 (being Laws 1965,
19 Chapter 35, Section 3, as amended) is amended to read:

20 "13-4-13. FAILURE TO PAY MINIMUM WAGE--TERMINATION OF
21 CONTRACT.--Every contract within the scope of the Public Works
22 Minimum Wage Act shall contain further provision that in the
23 event it is ~~[found]~~ determined by the director that any laborer
24 or mechanic employed on the site of the project has been or is
25 being paid ~~[as a result of a willful violation]~~ a wage rate or

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1 fringe benefit rate less than the rates required, the
 2 contracting agency ~~may~~ shall, within thirty days of the
 3 director's determination, by written notice to the contractor,
 4 subcontractor, employer or person acting as a contractor,
 5 terminate the right to proceed with the work or the part of the
 6 work as to which there has been a ~~willful~~ failure to pay the
 7 required wages or fringe benefits, and the contracting agency
 8 ~~may~~ shall prosecute the work to completion by contract or
 9 otherwise, and the contractor or person acting as a contractor
 10 and the contractor's or person's sureties shall be liable to
 11 the state for any excess costs occasioned thereby. Any party
 12 receiving notice of termination of a project or subcontract
 13 pursuant to the provisions of this section may appeal the
 14 finding of the director as provided in the Public Works Minimum
 15 Wage Act."

16 SECTION 3. Section 13-4-14 NMSA 1978 (being Laws 1965,
 17 Chapter 35, Section 4, as amended) is amended to read:

18 "13-4-14. PAYMENT OF WAGES FROM FUNDS WITHHELD--LIST OF
 19 CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT OF WAGE EARNERS.--

20 A. The director shall certify to the contracting
 21 agency the names of persons or firms the director has found to
 22 have ~~[disregarded their obligations to]~~ failed to pay wages or
 23 fringe benefits due employees under the Public Works Minimum
 24 Wage Act and the amount of arrears. The contracting agency
 25 shall pay or cause to be paid to the affected laborers and

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1 mechanics, from any accrued payments withheld under the terms
2 of the contract or designated for the project, three times the
3 amount of any wages or fringe benefits found due to the workers
4 pursuant to the Public Works Minimum Wage Act. The director
5 shall, after notice to the affected persons, distribute a list
6 to all departments of the state giving the names of persons or
7 firms the director has found to have willfully violated the
8 Public Works Minimum Wage Act. No contract or project shall be
9 awarded to the persons or firms appearing on this list or to
10 any firm, corporation, partnership or association in which the
11 persons or firms have an interest until three years have
12 elapsed from the date of publication of the list containing the
13 names of the persons or firms. A person to be included on the
14 list to be distributed may appeal the finding of the director
15 as provided in the Public Works Minimum Wage Act.

16 B. If the accrued payments withheld under the terms
17 of the contract, as mentioned in Subsection A of this section,
18 are insufficient to reimburse all the laborers and mechanics
19 with respect to whom there has been a failure to pay the wages
20 or fringe benefits required pursuant to the Public Works
21 Minimum Wage Act, the laborers and mechanics shall have the
22 right of action or intervention or both against the contractor
23 or person acting as a contractor and the contractor's or
24 person's sureties, conferred by law upon the persons furnishing
25 labor and materials, and, in such proceeding, it shall be no

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1 defense that the laborers and mechanics accepted or agreed to
 2 less than the required rate of wages or voluntarily made
 3 refunds. The director shall refer such matters to the district
 4 attorney in the appropriate county, and it is the duty and
 5 responsibility of the district attorney to bring civil suit for
 6 wages and fringe benefits due and ~~liquidated~~ other damages
 7 provided for in Subsection C of this section.

8 C. In the event of ~~[any violation of]~~ an aggregate
 9 underpayment of wages or fringe benefits greater than five
 10 hundred dollars (\$500) to an employee subject to the Public
 11 Works Minimum Wage Act or implementing rules, the contractor,
 12 subcontractor, employer or a person acting as a contractor
 13 responsible for the ~~[violation]~~ underpayment shall be liable to
 14 any affected employee for three times the amount of the
 15 employee's unpaid wages or fringe benefits. In addition, the
 16 contractor, subcontractor, employer or person acting as a
 17 contractor shall be liable to any affected employee for
 18 ~~[liquidated damages beginning with the first day of covered~~
 19 ~~employment in the sum of]~~ one hundred dollars (\$100) for each
 20 calendar day on which a contractor, subcontractor, employer or
 21 person acting as a contractor has willfully required or
 22 permitted ~~[an individual laborer or mechanic]~~ the employee to
 23 work in violation of the provisions of the Public Works Minimum
 24 Wage Act.

25 D. In an action brought pursuant to Subsection C of

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1 this section, the court [~~may~~] shall award, in addition to all
2 other remedies, attorney fees and costs [~~to~~] incurred on behalf
3 of an employee adversely affected by a violation of the Public
4 Works Minimum Wage Act by a contractor, subcontractor, employer
5 or person acting as a contractor."

underscoring material = new
~~[bracketed material]~~ = delete