

AN ACT concerning employment.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Prevailing Wage Act is amended by changing Sections 4 and 11 as follows:

(820 ILCS 130/4) (from Ch. 48, par. 39s-4)

Sec. 4. Ascertaining prevailing wage.

(a) The prevailing rate of wages paid to individuals covered under this Act shall not be less than the rate that prevails for work of a similar character on public works in the locality in which the work is performed under collective bargaining agreements or understandings between employers or employer associations and bona fide labor organizations relating to each craft or type of worker or mechanic needed to execute the contract or perform such work, and collective bargaining agreements or understandings successor thereto, provided that said employers or members of said employer associations employ at least 30% of the laborers, workers, or mechanics in the same trade or occupation in the locality where the work is being performed.

(b) If the prevailing rates of wages and fringe benefits cannot reasonably and fairly be applied in any locality because no such agreements or understandings exist, the

Department of Labor shall determine the rates and fringe benefits for the same or most similar work in the nearest and most similar neighboring locality in which such agreements or understandings exist. The Department of Labor shall keep a record of its findings available for inspection by any interested party in the office of the Department of Labor.

(c) In the event it is determined, after a written objection is filed and hearing is held in accordance with Section 9 of this Act, that less than 30% of the laborers, workers, or mechanics in a particular trade or occupation in the locality where the work is performed receive a collectively bargained rate of wage, then the average wage paid to such laborers, workers, or mechanics in the same trade or occupation in the locality for the 12-month period preceding the Department of Labor's annual determination shall be the prevailing rate of wage.

(d) The public body awarding any contract for public work or otherwise undertaking any public works shall specify in the call for bids for the contract, or where the public body performs the work without letting the contract in a written instrument provided to the contractor, that the general prevailing rate of wages in the locality for each craft or type of worker or mechanic needed to execute the contract or perform such work, also the general prevailing rate for legal holiday and overtime work, as ascertained by the Department of Labor shall be paid for each craft or type of worker needed to

execute the contract or to perform such work, and it shall be mandatory upon the contractor to whom the contract is awarded and upon any subcontractor under him, and where the public body performs the work, upon the public body, to pay not less than the specified rates to all laborers, workers and mechanics employed by them in the execution of the contract or such work. Compliance with this Act is a matter of statewide concern, and a public body may not opt out of any provisions herein.

(e) The public body or other entity awarding the contract shall cause to be inserted in the project specifications and the contract a stipulation to the effect that not less than the prevailing rate of wages as found by the Department of Labor or determined by the court on review shall be paid to all laborers, workers and mechanics performing work under the contract.

(f) When a public body or other entity covered by this Act has awarded work to a contractor without a public bid, contract or project specification, such public body or other entity shall comply with subsection (e) by providing the contractor with written notice on the purchase order related to the work to be done or on a separate document indicating that not less than the prevailing rate of wages ascertained by the Department of Labor or determined by the court on review shall be paid to all laborers, workers, and mechanics performing work on the project.

(g) Where a complaint is made and the Department of Labor determines that a violation occurred, the Department of Labor shall determine if proper written notice under this Section 4 was given. If proper written notice was not provided to the contractor by the public body or other entity, the Department of Labor shall order the public body or other entity to pay any interest, penalties or fines that would have been owed by the contractor if proper written notice were provided. The failure by a public body or other entity to provide written notice does not relieve the contractor of the duty to comply with the prevailing wage rate, nor of the obligation to pay any back wages, as determined under this Act. For the purposes of this subsection, back wages shall be limited to the difference between the actual amount paid and the prevailing rate of wages required to be paid for the project. The failure of a public body or other entity to provide written notice under this Section 4 does not diminish the right of a laborer, worker, or mechanic to the prevailing rate of wages as determined under this Act.

Any laborer, worker, or mechanic who is employed by the contractor or by any sub-contractor and is paid for services in a sum less than the prevailing wage rates for work performed on a project shall have a right of action for whatever difference there may be between (i) the amount so paid and (ii) the prevailing rates required to be paid for work performed on the project.

(h) It shall also be mandatory upon the contractor to whom the contract is awarded to insert into each subcontract and into the project specifications for each subcontract a written stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract. It shall also be mandatory upon each subcontractor to cause to be inserted into each lower tiered subcontract and into the project specifications for each lower tiered subcontract a stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract. A contractor or subcontractor who fails to comply with this subsection is in violation of this Act.

(i) When a contractor has awarded work to a subcontractor without a contract or contract specification, the contractor shall comply with subsection (h) by providing a subcontractor with a written statement indicating that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work on the project. A contractor or subcontractor who fails to comply with this subsection is in violation of this Act.

(j) Where a complaint is made and the Department of Labor determines that a violation has occurred, the Department of Labor shall determine if proper written notice under this Section 4 was given. If proper written notice was not provided

to the subcontractor by the contractor, the Department of Labor shall order the contractor to pay any interest, penalties, or fines that would have been owed by the subcontractor if proper written notice were provided. The failure by a contractor to provide written notice to a subcontractor does not relieve the subcontractor of the duty to comply with the prevailing wage rate, nor of the obligation to pay any back wages, as determined under this Act. For the purposes of this subsection, back wages shall be limited to the difference between the actual amount paid and the prevailing rate of wages required for the project. However, if proper written notice was not provided to the contractor by the public body or other entity under this Section 4, the Department of Labor shall order the public body or other entity to pay any interest, penalties, or fines that would have been owed by the subcontractor if proper written notice were provided. The failure by a public body or other entity to provide written notice does not relieve the subcontractor of the duty to comply with the prevailing wage rate, nor of the obligation to pay any back wages, as determined under this Act. For the purposes of this subsection, back wages shall be limited to the difference between the actual amount paid and the prevailing rate of wages required for the project. The failure to provide written notice by a public body, other entity, or contractor does not diminish the right of a laborer, worker, or mechanic to the prevailing rate of wages

as determined under this Act.

(k) A public body or other entity shall also require in all contractor's and subcontractor's bonds that the contractor or subcontractor include such provision as will guarantee the faithful performance of such prevailing wage clause as provided by contract or other written instrument. All bid specifications shall list the specified rates to all laborers, workers and mechanics in the locality for each craft or type of worker or mechanic needed to execute the contract.

(l) If the Department of Labor revises the prevailing rate of hourly wages to be paid by the public body or other entity, the revised rate shall apply to such contract, and the public body or other entity shall be responsible to notify the contractor and each subcontractor, of the revised rate.

The public body or other entity shall discharge its duty to notify of the revised rates by inserting a written stipulation in all contracts or other written instruments that states the prevailing rate of wages are revised by the Department of Labor and are available on the Department's official website. This shall be deemed to be proper notification of any rate changes under this subsection.

(m) Two or more investigatory hearings under this Section on the issue of establishing a new prevailing wage classification for a particular craft or type of worker shall be consolidated in a single hearing before the Department. The party requesting a consolidated investigatory hearing shall

have the burden of establishing that there is no existing prevailing wage classification for the particular craft or type of worker in any of the localities under consideration.

(n) It shall be mandatory upon the contractor or construction manager to whom a contract for public works is awarded to post, at a location on the project site of the public works that is easily accessible to the workers engaged on the project, the prevailing wage rates for each craft or type of worker or mechanic needed to execute the contract or project or work to be performed. In lieu of posting on the project site of the public works, a contractor which has a business location where laborers, workers, and mechanics regularly visit may: (1) post in a conspicuous location at that business the current prevailing wage rates for each county in which the contractor is performing work; or (2) provide such laborer, worker, or mechanic engaged on the public works project a written notice indicating the prevailing wage rates for the public works project. A failure to post or provide a prevailing wage rate as required by this Section is a violation of this Act.

(Source: P.A. 100-1177, eff. 6-1-19.)

(820 ILCS 130/11) (from Ch. 48, par. 39s-11)

Sec. 11. No public works project shall be instituted unless the provisions of this Act have been complied with. The provisions of this Act shall not be applicable to Federal

construction projects which require a prevailing wage determination by the United States Secretary of Labor. The Illinois Department of Labor represented by the Attorney General is empowered to sue for injunctive relief against the awarding of any contract or the continuation of work under any contract for public works at a time when the prevailing wage prerequisites have not been met. Any contract for public works awarded at a time when the prevailing wage prerequisites had not been met shall be void as against public policy and the contractor is prohibited from recovering any damages for the voiding of the contract or pursuant to the terms of the contract. The contractor is limited to a claim for amounts actually paid for labor and materials supplied to the public body. Where objections to a determination of the prevailing rate of wages or a court action relative thereto is pending, the public body shall not continue work on the project unless sufficient funds are available to pay increased wages if such are finally determined or unless the Department of Labor certifies such determination of the prevailing rate of wages as correct.

Any laborer, worker or mechanic employed by the contractor or by any sub-contractor under him who is paid for his services in a sum less than the prevailing ~~stipulated~~ rates for work done under such contract, shall have a right of action for whatever difference there may be between the amount so paid, and the rates provided by the contract together with costs and

such reasonable attorney's fees as shall be allowed by the court. Such contractor or subcontractor shall also be liable to the Department of Labor for 20% of such underpayments and shall be additionally liable to the laborer, worker or mechanic for punitive damages in the amount of 2% of the amount of any such penalty to the State for underpayments for each month following the date of payment during which such underpayments remain unpaid. Where a second or subsequent action to recover underpayments is brought against a contractor or subcontractor and the contractor or subcontractor is found liable for underpayments to any laborer, worker, or mechanic, the contractor or subcontractor shall also be liable to the Department of Labor for 50% of the underpayments payable as a result of the second or subsequent action, and shall be additionally liable for 5% of the amount of any such penalty to the State for underpayments for each month following the date of payment during which the underpayments remain unpaid. The Department shall also have a right of action on behalf of any individual who has a right of action under this Section. An action brought to recover same shall be deemed to be a suit for wages, and any and all judgments entered therein shall have the same force and effect as other judgments for wages. The action shall be brought within 5 years from the date of the failure to pay the wages or compensation. At the request of any laborer, workman or mechanic employed by the contractor or by any subcontractor

under him who is paid less than the prevailing wage rate required by this Act, the Department of Labor may take an assignment of such wage claim in trust for the assigning laborer, workman or mechanic and may bring any legal action necessary to collect such claim, and the contractor or subcontractor shall be required to pay the costs incurred in collecting such claim.

(Source: P.A. 98-328, eff. 1-1-14.)