

NJ Employer Groups Call on Murphy Admin to Correct Dept of Labor Overreach

NJ Manufacturers and Taxpayers at Risk as NJDOL Misapplies Prevailing Wage Laws

TRENTON, NEW JERSEY, USA, March 18, 2024 /EINPresswire.com/ -- New Jersey employer groups today called on the Murphy Administration to review recent enforcement actions of the



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*Samantha DeAlmeida,
Associated Builders and
Contractors Association of NJ*

Department of Labor and Workforce Development (NJDOLWD) and its application of the Prevailing Wage Act ("Act"), saying taxpayers and manufacturing businesses are at risk.

The New Jersey Business and Industry Association ([NJBIA](#)), Associated Builders and Contractors of New Jersey ([ABC-NJ](#)), and the National Federation of Independent Business New Jersey Chapter ([NFIB-NJ](#)) cited a recent case involving Bluewater Industries, a Cape May manufacturer recently cited for violating the Act by failing to pay employees working in its manufacturing shop at prevailing wage rates – even though none of its employees ever set foot on a public works jobsite.

The NJ DOLWD contends that prevailing wages were due because the Company's product eventually ended up on a public works jobsite, where it was modified and installed by the purchasing contractor. This is an erroneous and overreaching application of the Act, which was amended in 2023 in an effort to prevent exactly this type of overreaching by the NJDOLWD and the perilous effects such overreaching could have on New Jersey manufacturers and suppliers.***

In the pending case against Bluewater, NJDOLWD imposed back wages, fees, and penalties in excess of \$13,000, despite the fact that a Superior Court judge specifically held in an unrelated litigation matter involving the same project that Bluewater was not a so-called custom fabricator within the meaning of the Act.

"The bureaucrats at the New Jersey Department of Labor and Workforce Development are misapplying prevailing wage on businesses where their employees never even step foot on a public job site," said Samantha DeAlmeida, President of the Associated Builders and Contractors

Association of New Jersey (ABC-NJ). "Not only does this threaten the ability of businesses to operate in New Jersey, due to the much higher cost of doing business, but it also raises the cost for taxpayers on every single public works project."

"By misapplying the prevailing wage to small manufacturing businesses who have nothing to do with actual public works projects, the Department of Labor is putting New Jersey businesses at a significant disadvantage, since out-of-state manufacturers do not have to pay New Jersey's prevailing wage," said Eileen Kean, Executive Director for the National Federation of Independent Businesses, New Jersey Chapter (NFIB-NJ). "Competitors from other states already enjoy a lower cost of living and much lower taxes – to throw this huge price increase on businesses would drive them right out of the state. Ask yourself, why would any contractor buy something manufactured in New Jersey if it comes with a huge price mark-up?"

"New Jersey legislators passed a bi-partisan amendment to the Prevailing Wage Act that was signed into law to clarify that the mandate doesn't apply to manufacturers like this one," said Michele Siekerka, President of NJBIA. "Governor Murphy has said that he wants to work with the business community to make New Jersey stronger and fairer. That means pulling back on actions like this which are clearly an overreach by the Department of Labor. This type of action sets a dangerous precedent by wrongfully punishing a business that did absolutely nothing wrong."

Bluewater faces potential back wage obligations, fees, and penalties far exceeding its profit on the supply contract. In addition, this manufacturer alone is faced with the prospect of incorporating prevailing wage obligations into upcoming supply contracts where goods are destined for a public work jobsite, at the risk of being deemed a repeat offender by the NJ DOLWD. More significantly, Bluewater and other manufacturers who may be cited in the future by NJ DOLWD face the prospect of instantly becoming non-competitive, particularly as compared to out of state manufacturers, which are not subject to the jurisdiction of the NJ DOLWD.

Until recently, Bluewater's owner Ed Myland had plans to expand his Dennisville manufacturing operation, creating jobs in the process. According to Myland, the negative impact of the NJDOLWD investigation on his operations led to the cancellation of his plans to purchase a new facility. Rather than expanding his business in New Jersey, Myland is now forced to focus his energy on the legal battle ahead, one he considers unprecedented, unwarranted, and capable of setting a dangerous precedent for other manufacturers.

***With limited exceptions, the Act applies to construction-like activities that occur at or on a covered public works job site. In an August 2023 amendment, the definition of custom fabrication as to which the Act applies was modified to expressly exclude "smaller prefabricated components" from its coverage. In the Statement accompanying the bill, its sponsors explained that "[t]his bill amends [the Act] to clarify that [the Act] applies only to fabrication which is one or more entire structures or modules of the building or work, as opposed to smaller prefabricated components" and that prior amendments were "not intended to expand the coverage of prevailing wage requirements to activities that have long been understood to be outside the

[Act's] scope." The 2023 amendment was made retroactive to the date of a prior 2019 amendment.

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