

**FALSE CONTRACT PAYMENT CLAIMS  
[KNOWINGLY PAYS LESS]  
(N.J.S.A. 2C:21-34c)**

Count \_\_\_\_\_ of the indictment charges the defendant with knowingly paying an employee employed in public work at a rate less than the statutorily required rate.

**[READ COUNT OF THE INDICTMENT]**

The statute provides in pertinent part:

An employer commits a crime if the employer knowingly pays one or more employees employed in public work ... at a rate less than the rate required [by law].<sup>1</sup>

In order to convict the defendant of this charge, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant was an employer;
2. That the defendant employed \_\_\_\_\_ (Name of employee[s]);
3. That the defendant's employee[s] was [were] employed in public work;
4. That the defendant knew his employee[s] was [were] employed in public work;
5. That the rate of pay for public work employees was set by law;

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<sup>1</sup> P.L. 1963, c. 150 (c. 34:11-56.25 et seq.)

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6. That the defendant knew his employee's/employees' rate of pay was set by this law; and

7. That the defendant paid his/her employee[s] knowing it was less than the rate required by this law.

The first element that the State must prove beyond a reasonable doubt is that the defendant was an employer. An employer is defined as, "One who employs the services of others; one for whom employees work and who pays their wages or salaries."<sup>2</sup> An employer "includes any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee."<sup>3</sup> An employee "includes any individual employed by an employer."<sup>4</sup>

The second element the State must prove beyond a reasonable doubt is that the defendant employed \_\_\_\_\_ (Name of Employee[s]).

The third element the State must prove beyond a reasonable doubt is that the defendant's employee[s] was [were] employed in public works.

Public work means [**choose applicable**] construction, reconstruction, demolition, alteration, custom fabrication,<sup>5</sup> or repair work, or maintenance work,<sup>6</sup> including painting and decorating, done under contract<sup>7</sup> and paid for in whole or in part out of the funds of a public

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<sup>2</sup> Black's Law Dictionary 5<sup>th</sup> Ed. 1979

<sup>3</sup> N.J.S.A. 34:11-56a1(g)

<sup>4</sup> N.J.S.A. 34:11-56a1(h).

<sup>5</sup> N.J.S.A. 34-11-56.26(12) defines "custom fabrication" as, "the fabrication of plumbing, heating, cooling, ventilation or exhaust duct systems, and mechanical insulation."

<sup>6</sup> N.J.S.A. 34:11-56.26(3) defines "Maintenance work" as, "the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased."

<sup>7</sup> Contract is defined by Black's Law Dictionary 5<sup>th</sup> Ed. 1979 as, "an agreement between two or more persons which creates an obligation to do or not to do a particular thing."

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body,<sup>8</sup> except work performed under a rehabilitation program.<sup>9</sup> Public work “shall also mean **[choose applicable]** construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract: (a) Not less than 55% of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and (b) The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.”<sup>10</sup>

The fourth element that the State must prove beyond a reasonable doubt is that the defendant knew his employee[s] was [were] employed in public work.

I have already defined “public work.”

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause such result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inference from the defendant’s conduct, words or acts. A state of mind is rarely susceptible of

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<sup>8</sup> N.J.S.A. 34:11-56.26(4) defines "Public body" as, “the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.”

<sup>9</sup> N.J.S.A. 34:11-56.26(8) defines "Work performed under a rehabilitation program" as, “work arranged by and at a State institution primarily for teaching and upgrading the skills and employment opportunities of the inmates of such institutions.”

<sup>10</sup> N.J.S.A. 34:11-56.26(5).

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direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all the surrounding circumstances established by the evidence.

The fifth element that the State must prove beyond a reasonable doubt is that defendant's employees rate of pay was set by law.

The law requires that employees "engaged in public works" must be paid no less than the "prevailing wage level for workmen<sup>11</sup> engaged in public works." The law defines the prevailing wage as, "the wage rate paid by virtue of collective bargaining agreements by employers employing a majority of workers of that craft or trade subject to said collective bargaining agreements, in the locality<sup>12</sup> in which the public work is done."<sup>13</sup> In order for the State to prove this element you must be convinced beyond a reasonable doubt that the prevailing wage level in

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<sup>11</sup> N.J.S.A. 34:11-56.26(7) defines "workman" or "worker" as, "includ[ing] [any] laborer, mechanic, skilled or semi-skilled, laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site. For the purpose of P.L. 1963, c. 150 (C.34:11-56.25 et seq.), contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers."

<sup>12</sup> N.J.S.A. 34:11-56.26(2) defines "locality" as, "any political subdivision of the State, combination of the same or parts thereof, or any geographical area or areas classified, designated and fixed by the commissioner from time to time, provided that in determining the "locality" the commissioner shall be guided by the boundary lines of political subdivisions or parts thereof, or by a consideration of the areas with respect to which it has been the practice of employers of particular crafts or trades to engage in collective bargaining with the representatives of workers in such craft or trade."

<sup>13</sup> N.J.S.A. 34:11-56.26(9).

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this case was not less than \$\_\_\_\_\_.<sup>14</sup>

The sixth element that the State must prove beyond a reasonable doubt is that the defendant knew that his employee's/employees' rate of pay was set by law.

The seventh element that the State must prove beyond a reasonable doubt is that the defendant paid his/her employee[s] knowing it was less than the rate required by law.

I have already defined knowingly.

If you find that the State has failed to prove any of the seven elements beyond a reasonable doubt then you must find the defendant not guilty of the crime charged.

On the other hand, if you find that the State has proven all seven elements beyond a reasonable doubt, then you must find the defendant guilty of the crime of paying his/her public works employee[s] less than the rate required by law.

If you find defendant guilty beyond a reasonable doubt you must then determine whether the State has proven beyond a reasonable doubt that the amount of the contract was for:

**[CHARGE AS APPLICABLE]**

\$75,000 or above (    );

more than \$2,500 but less than \$75,000 (    );

\$2,500 or less (    ).

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<sup>14</sup> Where the parties have entered a stipulated agreement as to the prevailing wage level, the jury must be instructed to treat this fact as undisputed. The jury must also be instructed that, as with all evidence, the undisputed facts can be accepted or rejected by the jury in reaching a verdict. See Model Criminal Jury Charge: Stipulations. Additionally, the stipulation must be marked and filed as a Court Exhibit. See *State v. Wesner*, 372 N.J. Super. 489 (App. Div. 2004).