

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

Johnson, Brent. "New laws to benefit misclassified workers, the self-employed." *South Jersey Times (NJ)*, July 9, 2021: 004.

RH/CL

P.L. 2021, CHAPTER 165, *approved July 8, 2021*
Assembly, No. 5890 (*First Reprint*)

1 AN ACT concerning enforcement of various laws regarding
2 employee misclassification and stop-work orders, and amending
3 various parts of the statutory law.

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.2019, c.194 (C.34:1A-1.11) is amended to
9 read as follows:

10 1. As used in this act:

11 "Agency" means any agency, department, board or commission
12 of this State, or of any political subdivision of this State, that issues
13 a license for purposes of operating a business in this State.

14 "Commissioner" means the Commissioner of Labor and
15 Workforce Development, and shall include any designee, authorized
16 representative, or agent acting on behalf of the commissioner.

17 "License" means any agency permit, certificate, approval,
18 registration, charter or similar form of authorization that is required
19 by law and that is issued by any agency for the purposes of
20 operating a business in this State, and includes, but is not limited to:

21 (1) A certificate of incorporation pursuant to the "New Jersey
22 Business Corporation Act," N.J.S.14A:1-1 et seq.;

23 (2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.;

24 (3) A statement of qualification or a statement of foreign
25 qualification pursuant to the "Uniform Partnership Act (1996),"
26 P.L.2000, c.161 (C.42:1A-1 et al.);

27 (4) A certificate of limited partnership or a certificate of
28 authority pursuant to the "Uniform Limited Partnership Law
29 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

30 (5) A certificate of formation or certified registration pursuant
31 to the "New Jersey Limited Liability Company Act," P.L.1993,
32 c.210 (C.42:2B-1 et seq.); and

33 (6) Any license, certificate, permit or registration pursuant to
34 R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey
35 Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of
36 P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.);
37 section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of
38 P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor
39 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

40 "State wage, benefit and tax laws" means:

41 (1) P.L.1965, c.173 (C.34:11-4.1 et seq.);

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted June 16, 2021.

- 1 (2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150
2 (C.34:11-56.25 et seq.);
- 3 (3) The "New Jersey State Wage and Hour Law," P.L.1966,
4 c.113 (C.34:11-56a et seq.);
- 5 (4) The workers' compensation law, R.S.34:15-1 et seq.;
- 6 (5) The "unemployment compensation law," R.S.43:21-1 et seq.;
- 7 (6) The "Temporary Disability Benefits Law," P.L.1948, c.110
8 (C.43:21-25 et al.);
- 9 (7) P.L.2008, c.17 (C.43:21-39.1 et al.); **[and]**
- 10 (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
11 seq.; and
- 12 (9) P.L.2018, c.10 (C.34:11D-1 et seq.).
- 13 (cf: P.L.2009, c.194, s.1)
- 14

15 2. Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is amended to
16 read as follows:

17 2. a. (1) If the commissioner determines that an employer has
18 **[**failed, for one or more of its employees, to maintain and report
19 every record regarding wages, benefits and taxes which the
20 employer is required to maintain and report pursuant to State wage,
21 benefit and tax laws, as defined in section 1 of this act, and has, in
22 connection with that failure to maintain or report the records, failed
23 to pay wages, benefits, taxes or other contributions or assessments
24 as required by those laws**]** violated any State wage, benefit and tax
25 law, including but not limited to a violation of R.S.34:15-79, or
26 failed to meet obligations required by R.S.43:21-7 or R.S.43:21-14,
27 or violated any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or
28 P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner shall, as an
29 alternative to, or in addition to, any other actions taken in the
30 enforcement of those laws, notify the employer of the determination
31 and have an audit of the employer and any successor firm of the
32 employer conducted not more than 12 months after the
33 determination.

34 (2) If the commissioner is notified pursuant to subsection g. of
35 this section of a
36 conviction of an employer, the commissioner shall, as an alternative
37 to, or in addition to, any other actions taken in the enforcement of
38 the laws violated by the employer, have an audit of the employer
39 and any successor firm of the employer conducted not more than 12
40 months after receipt of the notification.

41 b. If, in an audit conducted pursuant to subsection a. of this
42 section, the commissioner determines that the employer or any
43 successor firm to the employer has continued in its failure to
44 maintain or report records as required by those laws or continued in
45 its failure to pay wages, benefits, taxes or other contributions or
46 assessments as required by those laws, or if the commissioner is
47 notified pursuant to subsection g. of this section of a conviction of

1 the employer and the offense resulting in the conviction occurred
2 subsequent to an audit conducted pursuant to subsection a. of this
3 section, the commissioner:

4 (1) May, after affording the employer or successor firm notice
5 and an opportunity for a hearing in accordance with the provisions
6 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
7 1 et seq.), issue a written determination directing any appropriate
8 agency to suspend any one or more licenses that are held by the
9 employer or successor firm, for a period of time determined by the
10 commissioner. In determining the length of a suspension, the
11 commissioner shall consider any of the following factors which are
12 relevant:

13 (a) The number of employees for which the employer or
14 successor firm failed to maintain or report required records and pay
15 required wages, benefits, taxes or other contributions or
16 assessments;

17 (b) The total amount of wages, benefits, taxes or other
18 contributions or assessments not paid by the employer or successor
19 firm;

20 (c) Any other harm resulting from the violation;

21 (d) Whether the employer or successor firm made good faith
22 efforts to comply with any applicable requirements;

23 (e) The duration of the violation;

24 (f) The role of the directors, officers or principals of the
25 employer or successor firm in the violation;

26 (g) Any prior misconduct by the employer or successor firm;
27 and

28 (h) Any other factors the commissioner considers relevant; and

29 (2) Shall conduct a subsequent audit or inspection of the
30 employer or any successor firm of the employer not more than 12
31 months after the date of the commissioner's written determination.

32 c. If, in the subsequent audit or inspection conducted pursuant
33 to subsection b. of this section, the commissioner determines that
34 the employer or successor firm has continued in its failure to
35 maintain or report records as required pursuant to State wage,
36 benefit and tax laws, as defined in section 1 of this act, and
37 continued in its failure to pay wages, benefits, taxes or other
38 contributions or assessments as required by those laws, or if the
39 commissioner is notified pursuant to subsection g. of this section of
40 a conviction of the employer for an offense occurring after the audit
41 conducted pursuant to subsection b. of this section, the
42 commissioner, after affording the employer or successor firm notice
43 and an opportunity for a hearing in accordance with the provisions
44 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
45 1 et seq.), shall issue a written determination directing any
46 appropriate agency to permanently revoke any one or more licenses
47 that are held by the employer or any successor firm to the employer
48 and that are necessary to operate the employer or successor firm.

1 d. Upon receipt of any written determination of the
2 commissioner directing an agency to suspend or revoke a license
3 pursuant to this section, and notwithstanding any other law, the
4 agency shall immediately suspend or revoke the license.

5 e. In instances where an employee leasing company has
6 entered into an employee leasing agreement with a client company
7 pursuant to P.L.2001, c.260 (C.34:8-67 et seq.), any written
8 determination by the commissioner directing agencies to suspend an
9 employer license pursuant to subsection b. of this section, or revoke
10 an employer license pursuant to subsection c. of this section, for a
11 failure or continued failure to keep records regarding, and to pay,
12 wages, benefits and taxes pursuant to State wage, benefit and tax
13 laws, shall be for the suspension or revocation of the licenses of the
14 client company and not the licenses of the employee leasing
15 company if the commissioner determines that the failure or
16 continued failure was caused by incomplete, inaccurate, misleading,
17 or false information provided to the employee leasing company by
18 the client company. Nothing in this subsection shall be construed
19 as diminishing or limiting the authority or obligation of the
20 commissioner to rescind the registration of an employee leasing
21 company pursuant to the provisions of section 10 of P.L.2001,
22 c.260 (C.34:8-76).

23 f. If, in the course of an audit or inspection conducted pursuant
24 to this section, the commissioner discovers that an employee of the
25 employer or of any successor firm of the employer has failed to
26 provide compensation to the employee as required under any of the
27 State wage and hour laws as defined in R.S.34:11-57, then the
28 commissioner shall initiate a wage claim on behalf of the employee
29 pursuant to R.S.34:11-58.

30 g. Upon the conviction of an employer under subsection a. of
31 section 10 of P.L.1999, c.90 (C.2C:40A-2), section 13 of P.L.2019,
32 c.212 (C.34:11-58.6), subsection a. of section 10 of P.L.1965, c.173
33 (C.34:11-4.10), subsection a. of section 25 of P.L.1966, c.113
34 (C.34:11-56a24), or N.J.S.2C:20-2 if the property stolen consists of
35 compensation the employer failed to provide to an employee under
36 any State wage and hour law as defined in R.S.34:11-57, the
37 prosecutor or the court shall notify the commissioner of the
38 employer's conviction.

39 h. In the alternative to proceedings under the "Administrative
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in accordance
41 with the provisions of subsection b. of this section, and in addition
42 to any other actions taken in the enforcement of the laws violated
43 by any employer, the commissioner shall have the authority, to be
44 exercised in the commissioner's sole discretion, to bring
45 enforcement actions for any violation of any State wage, benefit and
46 tax law, including but not limited to a violation of R.S.34:15-79, or
47 a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-
48 14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-

1 21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), in the Office of
2 Administrative Law or in the Superior Court for the county in
3 which the violation occurred. When the commissioner, including
4 any of the commissioner's authorized representatives in the Office
5 of the Attorney General, brings an action in the Office of
6 Administrative Law or Superior Court which seeks relief on behalf
7 of any individual for any of the above violations, communications
8 between members of the Attorney General's office and that
9 individual shall be privileged as would be a communication
10 between an attorney and a client.

11 i. In any enforcement action brought under subsection h. of
12 this section, the commissioner, including any of the commissioner's
13 authorized representatives in the Office of the Attorney General,
14 may initiate the action by making, signing, and filing a verified
15 complaint against the employer. If the action is brought by the
16 commissioner in Superior Court, a jury trial may be requested upon
17 the application of any party. If the commissioner is a prevailing
18 plaintiff in the action, any and all remedies available by law shall be
19 available on behalf of any named or unnamed victims as if the
20 claims were brought directly by the victims. In addition to any
21 remedies sought on behalf of the named or unnamed victims, the
22 commissioner shall be entitled to seek any fines, penalties or
23 administrative assessments authorized by law, including but not
24 limited to penalties for misclassification set forth in section 1 of
25 P.L.2019, c.373 (C.34:1A-1.18). If the suit seeks relief for one or
26 more unnamed members of a class, the commissioner shall have the
27 discretion to settle the suit on the terms the commissioner deems
28 appropriate. If the commissioner is a prevailing plaintiff, the court
29 shall award reasonable attorney's fees and litigation and
30 investigation costs.

31 j. At any time after the filing of any verified complaint under
32 subsection i. of this section, or whenever it appears to the
33 commissioner that an employer has engaged in, is engaging in, or is
34 about to engage in, any violation of a State wage, benefit or tax law,
35 including a violation of R.S.34:15-79 or any failure to meet
36 obligations required by R.S.43:21-7 or R.S.43:21-14, or has
37 violated any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or
38 P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner may proceed
39 against the employer in a summary manner in the Superior Court of
40 New Jersey to obtain an injunction prohibiting the employer from
41 continuing or engaging in the violation or doing any acts in
42 furtherance of the violation, to compel compliance with any of the
43 provisions of this Title, or to prevent violations or attempts to
44 violate any of those provisions, or attempts to interfere with or
45 impede the enforcement of those provisions or the exercise or
46 performance of any power or duty under this Title. Prospective
47 injunctive relief against an employer shall also be available as a

1 remedy to the commissioner as a prevailing plaintiff in any
2 enforcement action under subsection i. of this section.

3 (cf: P.L.2019, c.212, s.1)

4

5 3. Section 1 of P.L.2019, c.372 (C.34:1A-1.17) is amended to
6 read as follows:

7 1. a. The Commissioner of Labor and Workforce Development
8 and any agent of the commissioner, upon receipt of a complaint or
9 through routine investigation for a violation of any State wage, benefit
10 and tax law, including but not limited to a violation of R.S.34:15-79,
11 or a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-
12 14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1
13 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), is authorized to enter,
14 during usual business hours, the place of business or employment of
15 any employer of the individual to determine compliance with those
16 laws, and for that purpose may examine payroll and other records and
17 interview employees, call hearings, administer oaths, take testimony
18 under oath and take interrogatories and oral depositions.

19 b. The commissioner may issue subpoenas for the attendance of
20 witnesses and the production of books and records. Any **[**employer or
21 agent of the employer who willfully **]** entity that fails to furnish **[**time
22 and wage records as required by law to **]** information required by to the
23 commissioner or agent of the commissioner upon request, or who
24 refuses to admit the commissioner or agent to the place of employment
25 of the employer, or who hinders or delays the commissioner or agent
26 in the performance of duties in the enforcement of this section, may be
27 fined not less than \$1,000 and shall be guilty of a disorderly persons
28 offense. Each day of the failure to furnish the records to the
29 commissioner or agent shall constitute a separate offense, and each
30 day of refusal to admit, of hindering, or of delaying the commissioner
31 or agent shall constitute a separate offense.

32 In addition to the foregoing fines, and in addition to or as an
33 alternative to any criminal proceedings, if an entity fails to comply
34 with any subpoena lawfully issued, or upon the refusal of any witness
35 to testify to any matter regarding which the witness may be lawfully
36 interrogated, the commissioner may apply to the Superior Court to
37 compel obedience by proceedings for contempt, in the same manner as
38 in a failure to comply with the requirements of a subpoena issued from
39 the court or a refusal to testify in the court.

40 c. (1) If the commissioner determines, after either an initial
41 determination as a result of an audit of a business or an investigation
42 pursuant to subsection a. of this section, that an employer is in
43 violation of any State wage, benefit and tax law, including but not
44 limited to a violation of R.S.34:15-79, or a failure to meet obligations
45 required by R.S.43:21-7 or R.S.43:21-14, or for a violation of any
46 provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293
47 (C.34:15C-1 et al.), the commissioner may issue a stop-work order

1 against the employer requiring cessation of all business operations of
2 the employer at **【the specific place of business or employment in**
3 **which the violation exists】** one or more worksites or across all of the
4 employer's worksites and places of business. The stop-work order
5 may be issued only against the employer found to be in violation or
6 non-compliance. The commissioner shall serve a notification of intent
7 to issue a stop-work order on the employer at the place of business or,
8 for a particular employer worksite, at that worksite at least seven days
9 prior to the issuance of a stop-work order. The order shall be effective
10 when served upon the employer at the place of business or, for a
11 particular employer worksite, when served at that worksite. The order
12 shall remain in effect until the commissioner issues an order releasing
13 the stop-work order upon finding that the employer has come into
14 compliance and has paid any penalty deemed to be satisfactory to the
15 commissioner, or after the commissioner determines, in a hearing held
16 pursuant to paragraph (2) of this subsection, that the employer did not
17 commit the act on which the order was based. The stop-work order
18 shall be effective against any successor entity engaged in the same or
19 equivalent trade or activity that has one or more of the same principals
20 or officers as the corporation, partnership, limited liability company, or
21 sole proprietorship against which the stop-work order was issued. The
22 commissioner may assess a civil penalty of \$5,000 per day against an
23 employer for each day that it conducts business operations that are in
24 violation of the stop-work order. A request for hearing shall not
25 automatically stay the effect of the order.

26 (2) An employer who is subject to a stop-work order shall, within
27 72 hours of its receipt of the notification, have the right to appeal to
28 the commissioner in writing for an opportunity to be heard and contest
29 the stop-work order.

30 Within seven business days of receipt of the notification from the
31 employer, the commissioner shall hold a hearing to allow the employer
32 to contest the issuance of a stop-work order. The department and the
33 employer may present evidence and make any arguments in support of
34 their respective positions on the imposition of the misclassification
35 penalty. If a hearing is not held within seven business days of receipt
36 of the notification from the employer, an administrative law judge
37 shall have the authority to release the stop-work order. The
38 commissioner shall issue a written decision within five business days
39 of the hearing either upholding or reversing the employer's stop-work
40 order. The decision shall include the grounds for upholding or
41 reversing the employer's stop-work order. If the employer disagrees
42 with the written decision, the employer may appeal the decision to the
43 commissioner, in accordance with the "Administrative Procedure Act,"
44 P.L.1968, c.410 (C.52:14B-1 et seq.).

45 If the employer does not request an appeal to the commissioner in
46 writing, the stop-work order shall become a final order after the
47 expiration of the 72-hour period. The authority to assess a civil penalty
48 under paragraph (1) of this subsection shall be in addition to any

1 misclassification penalty assessed under section 1 of P.L.2019, C.373
2 (C.34:1A-1.18) and all other enforcement provisions or assessments
3 issued for the employer's violation of any State wage, benefit and tax
4 law, including but not limited to a violation of R.S.34:15-79, or a
5 failure to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or
6 for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et
7 seq.) or P.L.1989, c.293 (C.34:15C-1 et al.) The commissioner may
8 '[set] compromise' any civil penalty assessed under this section in an
9 amount the commissioner determines to be appropriate.

10 Once the stop-work order becomes final, any employee affected by
11 a stop-work order issued pursuant to this section shall be entitled to
12 pay from the employer for the first ten days of work lost because of the
13 stop-work. Upon request of any employee not paid wages, the
14 commissioner can take assignment of the claim and bring any legal
15 action necessary to collect all that is due.

16 (3) As an alternative to issuing a stop-work order in accordance
17 with paragraph (1) of this subsection, if the commissioner determines,
18 after an investigation pursuant to subsection a. of this section, that an
19 employer is in violation of R.S.34:15-79, the commissioner may
20 provide and transfer all details and materials related to the
21 investigation under this section to the Director of the Division of
22 Workers' Compensation for any enforcement of penalties or stop-work
23 orders the director determines are appropriate.

24 d. For purposes of this section:

25 "Employer" means any individual, partnership, association, joint
26 stock company, trust, corporation, the administrator or executor of the
27 estate of a deceased individual, or the receiver, trustee, or successor of
28 any of the same, employing any person in this State. For the purposes
29 of this subsection the officers of a corporation and any agents having
30 the management of such corporation shall be deemed to be the
31 employers of the employees of the corporation. In addition, any
32 members of a partnership or limited liability company and any agents
33 having the management of such partnership or limited liability
34 company shall be deemed to be employers of the employees of the
35 partnership or limited liability company.

36 "Employee" means any person suffered or permitted to work by an
37 employer, except a person performing services for remuneration
38 whose services satisfy the factors set forth in subparagraphs (A),(B),
39 and (C) of R.S.43:21-19(i)(6).

40 "Employ" means to suffer or permit to work.

41 "State wage, benefit and tax laws" means "State wage, benefit and
42 tax laws" as defined in section 1 of P.L.2009, c.194 (C.34:1A-1.11).

43 e. Nothing in this section shall preclude an employer from
44 seeking injunctive relief from a court of competent jurisdiction if the
45 employer can demonstrate that the stop-work order would be issued or
46 has been issued in error.

47 (cf: P.L.2019, c.372, s.1)

1 4. Section 2 of P.L.2019, c.158 (C.34:20-7.1) is amended to
2 read as follows:

3 2. a. The Commissioner of Labor and Workforce Development
4 and any agent of the commissioner, upon receipt of a complaint or
5 through a routine investigation for a violation of any **【wage and**
6 **hour law or】** State wage, benefit and tax law, as defined in section 1
7 of P.L.2009, c.194 (C.34:1A-1.11), including but not limited to a
8 violation of R.S.34:15-79, or a failure to meet obligations as
9 provided in R.S.43:21-7 and R.S.43:21-14, or for a violation of any
10 provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989,
11 c.293 (C.34:15C-1 et al.), is authorized to enter, during usual
12 business hours, the place of business or employment of any
13 employer of the individual to determine compliance with the wage
14 and hour laws, R.S.34:15-79, R.S.43:21-7, or R.S.43:21-14, and for
15 that purpose may examine payroll and other records and interview
16 employees, call hearings, administer oaths, take testimony under
17 oath and take interrogatories and oral depositions.

18 b. The commissioner may issue subpoenas for the attendance
19 of witnesses and the production of books and records. Any
20 **【employer or agent of the employer who willfully】** entity that fails
21 to furnish **【time and wage records as required by law to】**
22 information required by the commissioner or agent of the
23 commissioner upon request, or who refuses to admit the
24 commissioner or agent to the place of employment of the employer,
25 or who hinders or delays the commissioner or agent in the
26 performance of duties in the enforcement of this section, may be
27 fined not less than \$1,000 and shall be guilty of a disorderly persons
28 offense. Each day of the failure to furnish the time and wage
29 records to the commissioner or agent shall constitute a separate
30 offense, and each day of refusal to admit, of hindering, or of
31 delaying the commissioner or agent shall constitute a separate
32 offense.

33 In addition to the foregoing fines, and in addition to or as an
34 alternative to any criminal proceedings, if an entity fails to comply
35 with any lawfully issued subpoena, or upon the refusal of any
36 witness to testify to any matter regarding which the witness may be
37 lawfully interrogated, the commissioner or the commissioner's
38 designee may apply to the Superior Court to compel obedience by
39 proceedings for contempt, in the same manner as in a failure to
40 comply with the requirements of a subpoena issued from the court
41 or a refusal to testify in the court.

42 c. (1) If the commissioner determines, after either an initial
43 determination as a result of an audit of a business or an
44 investigation pursuant to subsection a. of this section, that an
45 employer is in violation of any **【wage and hour law or】** State wage,
46 benefit and tax law, as defined in section 1 of P.L.2009, c.194
47 (C.34:1A-1.11), including but not limited to a violation of

1 R.S.34:15-79, or has failed to meet obligations as provided in
2 R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of
3 P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-
4 1 et al.), the commissioner may issue a stop-work order against the
5 employer requiring cessation of all business operations of the
6 employer at **【the specific place of business or employment in which**
7 **the violation exists】** one or more worksites or across all of the
8 employer's worksites and places of business. The stop-work order
9 may be issued only against the employer found to be in violation or
10 non-compliance. If a stop-work order has been issued against a
11 subcontractor pursuant to this subsection, the general contractor
12 shall retain the right to terminate the subcontractor from the project.
13 The order shall be effective when served upon the employer at the
14 place of business or, for a particular employer worksite, when
15 served at that worksite. The order shall remain in effect until the
16 commissioner issues an order releasing the stop-work order upon
17 finding that the employer has come into compliance and has paid
18 any penalty deemed to be satisfactory to the commissioner, or after
19 the commissioner determines, in a hearing held pursuant to
20 paragraph (2) of this subsection, that the employer did not commit
21 the act on which the order was based. The stop-work order shall be
22 effective against any successor entity engaged in the same or
23 equivalent trade or activity that has one or more of the same
24 principals or officers as the corporation, partnership, limited
25 liability company, or sole proprietorship against which the stop-
26 work order was issued.

27 (2) An employer who is subject to a stop-work order shall have
28 the right to appeal to the commissioner. The contractor may notify
29 the Director of the Division of Wage and Hour Compliance of its
30 request for an opportunity to be heard and contest the stop-work
31 order in writing within 72 hours of its receipt of the notification. A
32 request for hearing shall not automatically stay the effect of the
33 order.

34 Within seven business days of receipt of the notification from the
35 contractor, the director shall hold a hearing to allow the contractor
36 to contest the issuance of a **【stop work】** stop-work order. The
37 director shall permit the contractor to present evidence at the
38 hearing. If the director fails to hold a hearing within seven business
39 days of receipt of the notification from the contractor, an
40 administrative law judge shall have the authority to release the stop-
41 work order.

42 The director shall issue a written decision within five business
43 days of the hearing either upholding or reversing the contractor's
44 stop-work order. The decision shall include the grounds for
45 upholding or reversing the contractor's stop-work order.

46 If the contractor disagrees with the written decision, the
47 contractor may appeal the decision to the commissioner, in

1 accordance with the "Administrative Procedure Act," P.L.1968,
2 c.410 (C.52:14B-1 et seq.).

3 If the employer does not request an appeal to the commissioner
4 in writing, the stop-work order shall become a final order after the
5 expiration of the 72-hour period. The authority to assess a civil
6 penalty under paragraph (1) of this subsection shall be in addition to
7 any misclassification penalty assessed under this subsection and all
8 other enforcement provisions or assessments issued for the
9 employer's violation of any State wage, benefit and tax law,
10 including but not limited to a violation of R.S.34:15-79, or a failure
11 to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for
12 a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.)
13 or P.L.1989, c.293 (C.34:15C-1 et al.). The commission may
14 compromise any civil penalty assessed under this section in an
15 amount the commissioner determines to be appropriate.

16 Once the stop-work order becomes final, any employee affected
17 by a stop-work order issued pursuant to this section shall be entitled
18 to pay from the employer for the first ten days of work lost because
19 of the stop-work order. Upon request of any employee not paid
20 wages, the commissioner may take assignment of the claim and
21 bring any legal action necessary to collect all that is due.

22 (3) As an alternative to issuing a stop-work order in accordance
23 with paragraph (1) of this subsection, if the commissioner
24 determines, after an investigation pursuant to subsection a. of this
25 section, that an employer is in violation of R.S.34:15-79, the
26 commissioner may provide and transfer all details and materials
27 related to the investigation under this section to the Director of the
28 Division of Workers' Compensation for any enforcement of
29 penalties or stop-work orders the director determines are
30 appropriate.

31 (cf: P.L.2019, c.158, s.2)

32

33 5. Section 11 of P.L.1963, c.150 (C.34:11-56.35) is amended to
34 read as follows:

35 11. (a) Any employer who willfully hinders or delays the
36 commissioner in the performance of his duties in the enforcement of
37 this act, or fails to make, keep, and preserve any records as required
38 under the provisions of this act, or falsifies any such record, or
39 refuses to make any such record accessible to the commissioner
40 upon demand, or fails to timely respond to or furnish records
41 required by a subpoena issued by the commissioner, or refuses to
42 furnish a sworn statement of such record or any other information
43 required for the proper enforcement of this act to the commissioner
44 upon demand, or pays or agrees to pay wages at a rate less than the
45 rate applicable under this act or otherwise violates any provision of
46 this act or of any regulation or order issued under this act shall be
47 guilty of a disorderly persons offense and shall, upon conviction

1 therefor, be fined not less than \$100.00 nor more than \$1,000 or be
2 imprisoned for not less than 10 nor more than 90 days, or by both
3 such fine and imprisonment. Each week, in any day of which a
4 worker is paid less than the rate applicable to him under this act and
5 each worker so paid, shall constitute a separate offense. In addition
6 to the foregoing fines, and in addition to or as an alternative to any
7 criminal proceedings, if an employer fails to comply with any
8 lawfully issued subpoena, or on the refusal of any witness to testify
9 to any matter regarding which the witness may be lawfully
10 interrogated, the commissioner may apply to the Superior Court to
11 compel obedience by proceedings for contempt, in the same manner
12 as in failure to comply with the requirements of a subpoena issued
13 from the court or a refusal to testify in the court.

14 (b) As an alternative to or in addition to any other sanctions
15 provided by law for violations of any provision of P.L.1963, c.150
16 (C.34:11-56.25 et seq.), when the Commissioner of Labor and
17 Workforce Development finds that an employer has violated that
18 act, the commissioner is authorized to assess and collect
19 administrative penalties, up to a maximum of \$2,500 for a first
20 violation and up to a maximum of \$5,000 for each subsequent
21 violation, specified in a schedule of penalties to be promulgated as a
22 rule or regulation by the commissioner in accordance with the
23 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
24 seq.). When determining the amount of the penalty imposed because
25 of a violation, the commissioner shall consider factors which
26 include the history of previous violations by the employer, the
27 seriousness of the violation, the good faith of the employer and the
28 size of the employer's business. No administrative penalty shall be
29 levied pursuant to this section unless the Commissioner of Labor
30 and Workforce Development provides the alleged violator with
31 notification of the violation and of the amount of the penalty by
32 certified mail and an opportunity to request a hearing before the
33 commissioner or his designee within 15 days following the receipt
34 of the notice. If a hearing is requested, the commissioner shall issue
35 a final order upon such hearing and a finding that a violation has
36 occurred. If no hearing is requested, the notice shall become a final
37 order upon expiration of the 15-day period. Payment of the penalty
38 is due when a final order is issued or when the notice becomes a
39 final order. Any penalty imposed pursuant to this section may be
40 recovered with costs in a summary proceeding commenced by the
41 commissioner pursuant to the "Penalty Enforcement Law of 1999,"
42 P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine
43 or penalty pursuant to this section shall be applied toward
44 enforcement and administration costs of the Division of Workplace
45 Standards in the Department of Labor and Workforce Development.

46 (c) When the Commissioner of Labor and Workforce
47 Development finds that the employer has violated provisions of
48 P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may

1 refer the matter to the Attorney General or his designee for
2 investigation and prosecution. Nothing in this subsection shall be
3 deemed to limit the authority of the Attorney General to investigate
4 and prosecute violations of the New Jersey Code of Criminal
5 Justice, nor to limit the commissioner's ability to refer any matter
6 for criminal investigation or prosecution.

7 (d) If the commissioner makes an initial determination that an
8 employer has violated the provisions of P.L.1963, c.150 (C.34:11-
9 56.25 et seq.) by paying wages at rates less than the rates applicable
10 under that act, whether or not the commissioner refers the matter to
11 the Attorney General or other appropriate prosecutorial authority
12 for investigation or prosecution pursuant to subsection (c) of this
13 section, the commissioner may immediately issue a stop-work order
14 to cease all business operations at **every site where the violation**
15 **has occurred** one or more worksites or across all of the employer's
16 worksites and places of business. The stop-work order may be
17 issued only against the employer found to be in violation or non-
18 compliance. If a stop-work order has been issued against a
19 subcontractor pursuant to this subsection, the general contractor
20 shall retain the right to terminate the subcontractor from the project.
21 The stop-work order shall remain in effect until the commissioner
22 issues an order releasing the stop-work order upon finding that the
23 employer has agreed to pay wages at the required rate and has paid
24 any wages due and any penalty deemed satisfactory to the
25 commissioner. Once the stop-work order is issued, any employee
26 affected by a stop-work order issued pursuant to this section shall
27 be entitled to pay from the employer for the first ten days of work
28 lost because of the stop-work order. Upon request of any employee
29 not paid wages, the commissioner can take assignment of the claim
30 and bring any legal action necessary to collect all that is due. As a
31 condition for release from a stop-work order, the commissioner may
32 require the employer to file with the department periodic reports for
33 a probationary period that shall not exceed two years that
34 demonstrate the employer's continued compliance with the
35 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). The
36 commissioner may assess a civil penalty of \$5,000 per day against
37 an employer for each day that it conducts business operations that
38 are in violation of the stop-work order. That penalty shall be
39 collected by the commissioner in a summary proceeding in
40 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
41 c.274 (C.2A:58-10 et seq.).

42 (cf: P.L.2019, c.158, s.1)

43
44 6. Section 8 of P.L.2019, c.212 (C.34:11-58.1) is amended to
45 read as follows:

46 8. a. If an employer fails to comply with a final determination
47 of the commissioner or a judgment of a court, including a small

1 claims court, made under the provisions of State wage and hour
2 laws or of section 10 of P.L.1999, c.90 (C.2C:40-2), to pay an
3 employee any wages owed or damages awarded within ten days of
4 the time that the determination or judgement requires the payment,
5 the commissioner may do either or both of the following:

6 (1) issue, in the manner provided in subsection b. of section 2 of
7 P.L.2009, c.194 (C.34:1A-1.12), a written determination directing
8 any appropriate agency to suspend one or more licenses held by the
9 employer or any successor firm of the employer until the employer
10 complies with the determination or judgement; or

11 (2) issue a **【stop work】** stop-work order against the violators
12 requiring the cessation of all business operations **【of the violator.**
13 The stop work order may only be issued against the individual or
14 entity found to be in violation, and only as to the specific place of
15 business or employment for which the violation exists **】** at one or
16 more worksites or across all of the employer's worksites and places
17 of business. The **【stop work】** stop-work order shall be effective
18 when served upon the violator or at a place of business or
19 employment by posting a copy of the **【stop work】** stop-work order
20 in a conspicuous location at the place of business or employment.
21 The **【stop work】** stop-work order shall remain in effect until the
22 commissioner issues an order releasing the **【stop work】** stop-work
23 order upon a finding that the violation has been corrected. As a
24 condition of release of a stop-work order under this section, the
25 commissioner may require the employer against whom the stop-
26 work order had been issued to file with the department periodic
27 reports for a probationary period of two years. The commissioner
28 may assess a civil penalty of \$5,000 per day against an employer for
29 each day that it conducts business operations that are in violation of
30 the stop-work order. That penalty shall be collected by the
31 commissioner in a summary proceeding in accordance with the
32 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
33 et seq.).

34 b. **【Stop work】** Stop-work orders and any penalties imposed
35 under a **【stop work】** stop-work order against a corporation,
36 partnership, limited liability corporation, or sole proprietorship shall
37 be effective against any successor entity that has one or more of the
38 same principals or officers as the corporation, partnership, or sole
39 proprietorship against which the **【stop work】** stop-work order was
40 issued and that is engaged in the same or equivalent trade or
41 activity.

42 c. Any employee affected by a **【stop work】** stop-work order
43 issued pursuant to this section shall be paid by the employer for the
44 first ten days of work lost because of the **【stop work】** stop-work
45 order.

1 d. A rebuttable presumption that an employer has established a
2 successor entity shall arise if the two share at least two of the
3 following capacities or characteristics:

- 4 (1) perform similar work within the same geographical area;
- 5 (2) occupy the same premises;
- 6 (3) have the same telephone or fax number;
- 7 (4) have the same email address or Internet website;
- 8 (5) employ substantially the same work force, administrative
9 employees, or both;
- 10 (6) utilize the same tools, facilities, or equipment;
- 11 (7) employ or engage the services of any person or persons
12 involved in the direction or control of the other; or
- 13 (8) list substantially the same work experience.

14 (cf: P.L.2019, c.212, s.8)

15

16 7. This act shall take effect immediately.

17

18

19

20

21 _____
22 Concerns enforcement of employee misclassification and stop-
work order laws.

CHAPTER 165

AN ACT concerning enforcement of various laws regarding employee misclassification and stop-work orders, and amending various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.2019, c.194 (C.34:1A-1.11) is amended to read as follows:

C.34:1A-1.11 Definitions relative to suspension, revocation of certain employer licenses.

1. As used in this act:

"Agency" means any agency, department, board or commission of this State, or of any political subdivision of this State, that issues a license for purposes of operating a business in this State.

"Commissioner" means the Commissioner of Labor and Workforce Development, and shall include any designee, authorized representative, or agent acting on behalf of the commissioner.

"License" means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this State, and includes, but is not limited to:

- (1) A certificate of incorporation pursuant to the "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq.;
- (2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.;
- (3) A statement of qualification or a statement of foreign qualification pursuant to the "Uniform Partnership Act (1996)," P.L.2000, c.161 (C.42:1A-1 et al.);
- (4) A certificate of limited partnership or a certificate of authority pursuant to the "Uniform Limited Partnership Law (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);
- (5) A certificate of formation or certified registration pursuant to the "New Jersey Limited Liability Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.); and
- (6) Any license, certificate, permit or registration pursuant to R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.); section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

"State wage, benefit and tax laws" means:

- (1) P.L.1965, c.173 (C.34:11-4.1 et seq.);
- (2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.);
- (3) The "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.);
- (4) The workers' compensation law, R.S.34:15-1 et seq.;
- (5) The "unemployment compensation law," R.S.43:21-1 et seq.;
- (6) The "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);
- (7) P.L.2008, c.17 (C.43:21-39.1 et al.);
- (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; and
- (9) P.L.2018, c.10 (C.34:11D-1 et seq.).

2. Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is amended to read as follows:

C.34:1A-1.12 Commissioner; actions relative to employer violations.

2. a. (1) If the commissioner determines that an employer has violated any State wage, benefit and tax law, including but not limited to a violation of R.S.34:15-79, or failed to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or violated any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner shall, as an alternative to, or in addition to, any other actions taken in the enforcement of those laws, notify the employer of the determination and have an audit of the employer and any successor firm of the employer conducted not more than 12 months after the determination.

(2) If the commissioner is notified pursuant to subsection g. of this section of a conviction of an employer, the commissioner shall, as an alternative to, or in addition to, any other actions taken in the enforcement of the laws violated by the employer, have an audit of the employer and any successor firm of the employer conducted not more than 12 months after receipt of the notification.

b. If, in an audit conducted pursuant to subsection a. of this section, the commissioner determines that the employer or any successor firm to the employer has continued in its failure to maintain or report records as required by those laws or continued in its failure to pay wages, benefits, taxes or other contributions or assessments as required by those laws, or if the commissioner is notified pursuant to subsection g. of this section of a conviction of the employer and the offense resulting in the conviction occurred subsequent to an audit conducted pursuant to subsection a. of this section, the commissioner:

(1) May, after affording the employer or successor firm notice and an opportunity for a hearing in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), issue a written determination directing any appropriate agency to suspend any one or more licenses that are held by the employer or successor firm, for a period of time determined by the commissioner. In determining the length of a suspension, the commissioner shall consider any of the following factors which are relevant:

(a) The number of employees for which the employer or successor firm failed to maintain or report required records and pay required wages, benefits, taxes or other contributions or assessments;

(b) The total amount of wages, benefits, taxes or other contributions or assessments not paid by the employer or successor firm;

(c) Any other harm resulting from the violation;

(d) Whether the employer or successor firm made good faith efforts to comply with any applicable requirements;

(e) The duration of the violation;

(f) The role of the directors, officers or principals of the employer or successor firm in the violation;

(g) Any prior misconduct by the employer or successor firm; and

(h) Any other factors the commissioner considers relevant; and

(2) Shall conduct a subsequent audit or inspection of the employer or any successor firm of the employer not more than 12 months after the date of the commissioner's written determination.

c. If, in the subsequent audit or inspection conducted pursuant to subsection b. of this section, the commissioner determines that the employer or successor firm has continued in its failure to maintain or report records as required pursuant to State wage, benefit and tax laws, as defined in section 1 of this act, and continued in its failure to pay wages, benefits, taxes or other contributions or assessments as required by those laws, or if the commissioner is notified pursuant to subsection g. of this section of a conviction of the employer for an offense occurring after the audit conducted pursuant to subsection b. of this section, the

commissioner, after affording the employer or successor firm notice and an opportunity for a hearing in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall issue a written determination directing any appropriate agency to permanently revoke any one or more licenses that are held by the employer or any successor firm to the employer and that are necessary to operate the employer or successor firm.

d. Upon receipt of any written determination of the commissioner directing an agency to suspend or revoke a license pursuant to this section, and notwithstanding any other law, the agency shall immediately suspend or revoke the license.

e. In instances where an employee leasing company has entered into an employee leasing agreement with a client company pursuant to P.L.2001, c.260 (C.34:8-67 et seq.), any written determination by the commissioner directing agencies to suspend an employer license pursuant to subsection b. of this section, or revoke an employer license pursuant to subsection c. of this section, for a failure or continued failure to keep records regarding, and to pay, wages, benefits and taxes pursuant to State wage, benefit and tax laws, shall be for the suspension or revocation of the licenses of the client company and not the licenses of the employee leasing company if the commissioner determines that the failure or continued failure was caused by incomplete, inaccurate, misleading, or false information provided to the employee leasing company by the client company. Nothing in this subsection shall be construed as diminishing or limiting the authority or obligation of the commissioner to rescind the registration of an employee leasing company pursuant to the provisions of section 10 of P.L.2001, c.260 (C.34:8-76).

f. If, in the course of an audit or inspection conducted pursuant to this section, the commissioner discovers that an employee of the employer or of any successor firm of the employer has failed to provide compensation to the employee as required under any of the State wage and hour laws as defined in R.S.34:11-57, then the commissioner shall initiate a wage claim on behalf of the employee pursuant to R.S.34:11-58.

g. Upon the conviction of an employer under subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2), section 13 of P.L.2019, c.212 (C.34:11-58.6), subsection a. of section 10 of P.L.1965, c.173 (C.34:11-4.10), subsection a. of section 25 of P.L.1966, c.113 (C.34:11-56a24), or N.J.S.2C:20-2 if the property stolen consists of compensation the employer failed to provide to an employee under any State wage and hour law as defined in R.S.34:11-57, the prosecutor or the court shall notify the commissioner of the employer's conviction.

h. In the alternative to proceedings under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in accordance with the provisions of subsection b. of this section, and in addition to any other actions taken in the enforcement of the laws violated by any employer, the commissioner shall have the authority, to be exercised in the commissioner's sole discretion, to bring enforcement actions for any violation of any State wage, benefit and tax law, including but not limited to a violation of R.S.34:15-79, or a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), in the Office of Administrative Law or in the Superior Court for the county in which the violation occurred. When the commissioner, including any of the commissioner's authorized representatives in the Office of the Attorney General, brings an action in the Office of Administrative Law or Superior Court which seeks relief on behalf of any individual for any of the above violations, communications between members of the Attorney General's office and that individual shall be privileged as would be a communication between an attorney and a client.

i. In any enforcement action brought under subsection h. of this section, the commissioner, including any of the commissioner's authorized representatives in the Office of the Attorney General, may initiate the action by making, signing, and filing a verified complaint against the employer. If the action is brought by the commissioner in Superior Court, a jury trial may be requested upon the application of any party. If the commissioner is a prevailing plaintiff in the action, any and all remedies available by law shall be available on behalf of any named or unnamed victims as if the claims were brought directly by the victims. In addition to any remedies sought on behalf of the named or unnamed victims, the commissioner shall be entitled to seek any fines, penalties or administrative assessments authorized by law, including but not limited to penalties for misclassification set forth in section 1 of P.L.2019, c.373 (C.34:1A-1.18). If the suit seeks relief for one or more unnamed members of a class, the commissioner shall have the discretion to settle the suit on the terms the commissioner deems appropriate. If the commissioner is a prevailing plaintiff, the court shall award reasonable attorney's fees and litigation and investigation costs.

j. At any time after the filing of any verified complaint under subsection i. of this section, or whenever it appears to the commissioner that an employer has engaged in, is engaging in, or is about to engage in, any violation of a State wage, benefit or tax law, including a violation of R.S.34:15-79 or any failure to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or has violated any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner may proceed against the employer in a summary manner in the Superior Court of New Jersey to obtain an injunction prohibiting the employer from continuing or engaging in the violation or doing any acts in furtherance of the violation, to compel compliance with any of the provisions of this Title, or to prevent violations or attempts to violate any of those provisions, or attempts to interfere with or impede the enforcement of those provisions or the exercise or performance of any power or duty under this Title. Prospective injunctive relief against an employer shall also be available as a remedy to the commissioner as a prevailing plaintiff in any enforcement action under subsection i. of this section.

3. Section 1 of P.L.2019, c.372 (C.34:1A-1.17) is amended to read as follows:

C.34:1A-1.17 Entrance into place of business, employment; stop-work order.

1. a. The Commissioner of Labor and Workforce Development and any agent of the commissioner, upon receipt of a complaint or through routine investigation for a violation of any State wage, benefit and tax law, including but not limited to a violation of R.S.34:15-79, or a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), is authorized to enter, during usual business hours, the place of business or employment of any employer of the individual to determine compliance with those laws, and for that purpose may examine payroll and other records and interview employees, call hearings, administer oaths, take testimony under oath and take interrogatories and oral depositions.

b. The commissioner may issue subpoenas for the attendance of witnesses and the production of books and records. Any entity that fails to furnish information required to the commissioner or agent of the commissioner upon request, or who refuses to admit the commissioner or agent to the place of employment of the employer, or who hinders or delays the commissioner or agent in the performance of duties in the enforcement of this section, may be fined not less than \$1,000 and shall be guilty of a disorderly persons offense. Each day of the failure to furnish the records to the commissioner or agent shall constitute a separate offense, and

each day of refusal to admit, of hindering, or of delaying the commissioner or agent shall constitute a separate offense.

In addition to the foregoing fines, and in addition to or as an alternative to any criminal proceedings, if an entity fails to comply with any subpoena lawfully issued, or upon the refusal of any witness to testify to any matter regarding which the witness may be lawfully interrogated, the commissioner may apply to the Superior Court to compel obedience by proceedings for contempt, in the same manner as in a failure to comply with the requirements of a subpoena issued from the court or a refusal to testify in the court.

c. (1) If the commissioner determines, after either an initial determination as a result of an audit of a business or an investigation pursuant to subsection a. of this section, that an employer is in violation of any State wage, benefit and tax law, including but not limited to a violation of R.S.34:15-79, or a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner may issue a stop-work order against the employer requiring cessation of all business operations of the employer at one or more worksites or across all of the employer's worksites and places of business. The stop-work order may be issued only against the employer found to be in violation or non-compliance. The commissioner shall serve a notification of intent to issue a stop-work order on the employer at the place of business or, for a particular employer worksite, at that worksite at least seven days prior to the issuance of a stop-work order. The order shall be effective when served upon the employer at the place of business or, for a particular employer worksite, when served at that worksite. The order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has come into compliance and has paid any penalty deemed to be satisfactory to the commissioner, or after the commissioner determines, in a hearing held pursuant to paragraph (2) of this subsection, that the employer did not commit the act on which the order was based. The stop-work order shall be effective against any successor entity engaged in the same or equivalent trade or activity that has one or more of the same principals or officers as the corporation, partnership, limited liability company, or sole proprietorship against which the stop-work order was issued. The commissioner may assess a civil penalty of \$5,000 per day against an employer for each day that it conducts business operations that are in violation of the stop-work order. A request for hearing shall not automatically stay the effect of the order.

(2) An employer who is subject to a stop-work order shall, within 72 hours of its receipt of the notification, have the right to appeal to the commissioner in writing for an opportunity to be heard and contest the stop-work order.

Within seven business days of receipt of the notification from the employer, the commissioner shall hold a hearing to allow the employer to contest the issuance of a stop-work order. The department and the employer may present evidence and make any arguments in support of their respective positions on the imposition of the misclassification penalty. If a hearing is not held within seven business days of receipt of the notification from the employer, an administrative law judge shall have the authority to release the stop-work order. The commissioner shall issue a written decision within five business days of the hearing either upholding or reversing the employer's stop-work order. The decision shall include the grounds for upholding or reversing the employer's stop-work order. If the employer disagrees with the written decision, the employer may appeal the decision to the commissioner, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

If the employer does not request an appeal to the commissioner in writing, the stop-work order shall become a final order after the expiration of the 72-hour period. The authority to assess a civil penalty under paragraph (1) of this subsection shall be in addition to any

misclassification penalty assessed under section 1 of P.L.2019, c.373 (C.34:1A-1.18) and all other enforcement provisions or assessments issued for the employer's violation of any State wage, benefit and tax law, including but not limited to a violation of R.S.34:15-79, or a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.) The commissioner may compromise any civil penalty assessed under this section in an amount the commissioner determines to be appropriate.

Once the stop-work order becomes final, any employee affected by a stop-work order issued pursuant to this section shall be entitled to pay from the employer for the first ten days of work lost because of the stop-work. Upon request of any employee not paid wages, the commissioner can take assignment of the claim and bring any legal action necessary to collect all that is due.

(3) As an alternative to issuing a stop-work order in accordance with paragraph (1) of this subsection, if the commissioner determines, after an investigation pursuant to subsection a. of this section, that an employer is in violation of R.S.34:15-79, the commissioner may provide and transfer all details and materials related to the investigation under this section to the Director of the Division of Workers' Compensation for any enforcement of penalties or stop-work orders the director determines are appropriate.

d. For purposes of this section:

"Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State. For the purposes of this subsection the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation. In addition, any members of a partnership or limited liability company and any agents having the management of such partnership or limited liability company shall be deemed to be employers of the employees of the partnership or limited liability company.

"Employee" means any person suffered or permitted to work by an employer, except a person performing services for remuneration whose services satisfy the factors set forth in subparagraphs (A),(B), and (C) of R.S.43:21-19(i)(6).

"Employ" means to suffer or permit to work.

"State wage, benefit and tax laws" means "State wage, benefit and tax laws" as defined in section 1 of P.L.2009, c.194 (C.34:1A-1.11).

e. Nothing in this section shall preclude an employer from seeking injunctive relief from a court of competent jurisdiction if the employer can demonstrate that the stop-work order would be issued or has been issued in error.

4. Section 2 of P.L.2019, c.158 (C.34:20-7.1) is amended to read as follows:

C.34:20-7.1 Determination of compliance; subpoena; stop-work order.

2. a. The Commissioner of Labor and Workforce Development and any agent of the commissioner, upon receipt of a complaint or through a routine investigation for a violation of any State wage, benefit and tax law, as defined in section 1 of P.L.2009, c.194 (C.34:1A-1.11), including but not limited to a violation of R.S.34:15-79, or a failure to meet obligations as provided in R.S.43:21-7 and R.S.43:21-14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), is authorized to enter, during usual business hours, the place of business or employment of any employer of the individual to determine compliance with the wage and hour laws, R.S.34:15-79, R.S.43:21-7, or R.S.43:21-14, and for that purpose may examine payroll and other records

and interview employees, call hearings, administer oaths, take testimony under oath and take interrogatories and oral depositions.

b. The commissioner may issue subpoenas for the attendance of witnesses and the production of books and records. Any entity that fails to furnish information required by the commissioner or agent of the commissioner upon request, or who refuses to admit the commissioner or agent to the place of employment of the employer, or who hinders or delays the commissioner or agent in the performance of duties in the enforcement of this section, may be fined not less than \$1,000 and shall be guilty of a disorderly persons offense. Each day of the failure to furnish the time and wage records to the commissioner or agent shall constitute a separate offense, and each day of refusal to admit, of hindering, or of delaying the commissioner or agent shall constitute a separate offense.

In addition to the foregoing fines, and in addition to or as an alternative to any criminal proceedings, if an entity fails to comply with any lawfully issued subpoena, or upon the refusal of any witness to testify to any matter regarding which the witness may be lawfully interrogated, the commissioner or the commissioner's designee may apply to the Superior Court to compel obedience by proceedings for contempt, in the same manner as in a failure to comply with the requirements of a subpoena issued from the court or a refusal to testify in the court.

c. (1) If the commissioner determines, after either an initial determination as a result of an audit of a business or an investigation pursuant to subsection a. of this section, that an employer is in violation of any State wage, benefit and tax law, as defined in section 1 of P.L.2009, c.194 (C.34:1A-1.11), including but not limited to a violation of R.S.34:15-79, or has failed to meet obligations as provided in R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner may issue a stop-work order against the employer requiring cessation of all business operations of the employer at one or more worksites or across all of the employer's worksites and places of business. The stop-work order may be issued only against the employer found to be in violation or non-compliance. If a stop-work order has been issued against a subcontractor pursuant to this subsection, the general contractor shall retain the right to terminate the subcontractor from the project. The order shall be effective when served upon the employer at the place of business or, for a particular employer worksite, when served at that worksite. The order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has come into compliance and has paid any penalty deemed to be satisfactory to the commissioner, or after the commissioner determines, in a hearing held pursuant to paragraph (2) of this subsection, that the employer did not commit the act on which the order was based. The stop-work order shall be effective against any successor entity engaged in the same or equivalent trade or activity that has one or more of the same principals or officers as the corporation, partnership, limited liability company, or sole proprietorship against which the stop-work order was issued.

(2) An employer who is subject to a stop-work order shall have the right to appeal to the commissioner. The contractor may notify the Director of the Division of Wage and Hour Compliance of its request for an opportunity to be heard and contest the stop-work order in writing within 72 hours of its receipt of the notification. A request for hearing shall not automatically stay the effect of the order.

Within seven business days of receipt of the notification from the contractor, the director shall hold a hearing to allow the contractor to contest the issuance of a stop-work order. The director shall permit the contractor to present evidence at the hearing. If the director fails to

hold a hearing within seven business days of receipt of the notification from the contractor, an administrative law judge shall have the authority to release the stop-work order.

The director shall issue a written decision within five business days of the hearing either upholding or reversing the contractor's stop-work order. The decision shall include the grounds for upholding or reversing the contractor's stop-work order.

If the contractor disagrees with the written decision, the contractor may appeal the decision to the commissioner, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

If the employer does not request an appeal to the commissioner in writing, the stop-work order shall become a final order after the expiration of the 72-hour period. The authority to assess a civil penalty under paragraph (1) of this subsection shall be in addition to any misclassification penalty assessed under this subsection and all other enforcement provisions or assessments issued for the employer's violation of any State wage, benefit and tax law, including but not limited to a violation of R.S.34:15-79, or a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.). The commission may compromise any civil penalty assessed under this section in an amount the commissioner determines to be appropriate.

Once the stop-work order becomes final, any employee affected by a stop-work order issued pursuant to this section shall be entitled to pay from the employer for the first ten days of work lost because of the stop-work order. Upon request of any employee not paid wages, the commissioner may take assignment of the claim and bring any legal action necessary to collect all that is due.

(3) As an alternative to issuing a stop-work order in accordance with paragraph (1) of this subsection, if the commissioner determines, after an investigation pursuant to subsection a. of this section, that an employer is in violation of R.S.34:15-79, the commissioner may provide and transfer all details and materials related to the investigation under this section to the Director of the Division of Workers' Compensation for any enforcement of penalties or stop-work orders the director determines are appropriate.

5. Section 11 of P.L.1963, c.150 (C.34:11-56.35) is amended to read as follows:

C.34:11-56.35 Penalties, stop-work orders.

11. (a) Any employer who willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or fails to timely respond to or furnish records required by a subpoena issued by the commissioner, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in any day of which a worker is paid less than the rate applicable to him under this act and each worker so paid, shall constitute a separate offense. In addition to the foregoing fines, and in addition to or as an alternative to any criminal proceedings, if an employer fails to comply with any lawfully issued subpoena, or on the

refusal of any witness to testify to any matter regarding which the witness may be lawfully interrogated, the commissioner may apply to the Superior Court to compel obedience by proceedings for contempt, in the same manner as in failure to comply with the requirements of a subpoena issued from the court or a refusal to testify in the court.

(b) As an alternative to or in addition to any other sanctions provided by law for violations of any provision of P.L.1963, c.150 (C.34:11-56.25 et seq.), when the Commissioner of Labor and Workforce Development finds that an employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$2,500 for a first violation and up to a maximum of \$5,000 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor and Workforce Development provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

(c) When the Commissioner of Labor and Workforce Development finds that the employer has violated provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may refer the matter to the Attorney General or his designee for investigation and prosecution. Nothing in this subsection shall be deemed to limit the authority of the Attorney General to investigate and prosecute violations of the New Jersey Code of Criminal Justice, nor to limit the commissioner's ability to refer any matter for criminal investigation or prosecution.

(d) If the commissioner makes an initial determination that an employer has violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) by paying wages at rates less than the rates applicable under that act, whether or not the commissioner refers the matter to the Attorney General or other appropriate prosecutorial authority for investigation or prosecution pursuant to subsection (c) of this section, the commissioner may immediately issue a stop-work order to cease all business operations at one or more worksites or across all of the employer's worksites and places of business. The stop-work order may be issued only against the employer found to be in violation or non-compliance. If a stop-work order has been issued against a subcontractor pursuant to this subsection, the general contractor shall retain the right to terminate the subcontractor from the project. The stop-work order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has agreed to pay wages at the required rate and has paid any wages due and any penalty deemed satisfactory to the commissioner. Once the stop-work

order is issued, any employee affected by a stop-work order issued pursuant to this section shall be entitled to pay from the employer for the first ten days of work lost because of the stop-work order. Upon request of any employee not paid wages, the commissioner can take assignment of the claim and bring any legal action necessary to collect all that is due. As a condition for release from a stop-work order, the commissioner may require the employer to file with the department periodic reports for a probationary period that shall not exceed two years that demonstrate the employer's continued compliance with the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). The commissioner may assess a civil penalty of \$5,000 per day against an employer for each day that it conducts business operations that are in violation of the stop-work order. That penalty shall be collected by the commissioner in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

6. Section 8 of P.L.2019, c.212 (C.34:11-58.1) is amended to read as follows:

C.34:11-58.1 Failure of employer to comply.

8. a. If an employer fails to comply with a final determination of the commissioner or a judgment of a court, including a small claims court, made under the provisions of State wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40-2), to pay an employee any wages owed or damages awarded within ten days of the time that the determination or judgement requires the payment, the commissioner may do either or both of the following:

(1) issue, in the manner provided in subsection b. of section 2 of P.L.2009, c.194 (C.34:1A-1.12), a written determination directing any appropriate agency to suspend one or more licenses held by the employer or any successor firm of the employer until the employer complies with the determination or judgement; or

(2) issue a stop-work order against the violators requiring the cessation of all business operations at one or more worksites or across all of the employer's worksites and places of business. The stop-work order shall be effective when served upon the violator or at a place of business or employment by posting a copy of the stop-work order in a conspicuous location at the place of business or employment. The stop-work order shall remain in effect until the commissioner issues an order releasing the stop-work order upon a finding that the violation has been corrected. As a condition of release of a stop-work order under this section, the commissioner may require the employer against whom the stop-work order had been issued to file with the department periodic reports for a probationary period of two years. The commissioner may assess a civil penalty of \$5,000 per day against an employer for each day that it conducts business operations that are in violation of the stop-work order. That penalty shall be collected by the commissioner in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

b. Stop-work orders and any penalties imposed under a stop-work order against a corporation, partnership, limited liability corporation, or sole proprietorship shall be effective against any successor entity that has one or more of the same principals or officers as the corporation, partnership, or sole proprietorship against which the stop-work order was issued and that is engaged in the same or equivalent trade or activity.

c. Any employee affected by a stop-work order issued pursuant to this section shall be paid by the employer for the first ten days of work lost because of the stop-work order.

d. A rebuttable presumption that an employer has established a successor entity shall arise if the two share at least two of the following capacities or characteristics:

(1) perform similar work within the same geographical area;

- (2) occupy the same premises;
- (3) have the same telephone or fax number;
- (4) have the same email address or Internet website;
- (5) employ substantially the same work force, administrative employees, or both;
- (6) utilize the same tools, facilities, or equipment;
- (7) employ or engage the services of any person or persons involved in the direction or control of the other; or
- (8) list substantially the same work experience.

7. This act shall take effect immediately.

Approved July 8, 2021.

ASSEMBLY, No. 5890

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 9, 2021

Sponsored by:

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

SYNOPSIS

Concerns enforcement of employee misclassification and stop-work order laws.

CURRENT VERSION OF TEXT

As introduced.



A5890 VERRELLI

2

1 AN ACT concerning enforcement of various laws regarding
2 employee misclassification and stop-work orders, and amending
3 various parts of the statutory law.

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.2019, c.194 (C.34:1A-1.11) is amended to
9 read as follows:

10 1. As used in this act:

11 "Agency" means any agency, department, board or commission
12 of this State, or of any political subdivision of this State, that issues
13 a license for purposes of operating a business in this State.

14 "Commissioner" means the Commissioner of Labor and
15 Workforce Development, and shall include any designee, authorized
16 representative, or agent acting on behalf of the commissioner.

17 "License" means any agency permit, certificate, approval,
18 registration, charter or similar form of authorization that is required
19 by law and that is issued by any agency for the purposes of
20 operating a business in this State, and includes, but is not limited to:

21 (1) A certificate of incorporation pursuant to the "New Jersey
22 Business Corporation Act," N.J.S.14A:1-1 et seq.;

23 (2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.;

24 (3) A statement of qualification or a statement of foreign
25 qualification pursuant to the "Uniform Partnership Act (1996),"
26 P.L.2000, c.161 (C.42:1A-1 et al.);

27 (4) A certificate of limited partnership or a certificate of
28 authority pursuant to the "Uniform Limited Partnership Law
29 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

30 (5) A certificate of formation or certified registration pursuant
31 to the "New Jersey Limited Liability Company Act," P.L.1993,
32 c.210 (C.42:2B-1 et seq.); and

33 (6) Any license, certificate, permit or registration pursuant to
34 R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey
35 Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of
36 P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.);
37 section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of
38 P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor
39 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

40 "State wage, benefit and tax laws" means:

41 (1) P.L.1965, c.173 (C.34:11-4.1 et seq.);

42 (2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150
43 (C.34:11-56.25 et seq.);

44 (3) The "New Jersey State Wage and Hour Law," P.L.1966,
45 c.113 (C.34:11-56a et seq.);

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 (4) The workers' compensation law, R.S.34:15-1 et seq.;
- 2 (5) The "unemployment compensation law," R.S.43:21-1 et seq.;
- 3 (6) The "Temporary Disability Benefits Law," P.L.1948, c.110
- 4 (C.43:21-25 et al.);
- 5 (7) P.L.2008, c.17 (C.43:21-39.1 et al.); **[and]**
- 6 (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
- 7 seq.; and
- 8 (9) P.L.2018, c.10 (C.34:11D-1 et seq.).
- 9 (cf: P.L.2009, c.194, s.1)

10

11 2. Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is amended to

12 read as follows:

13 2. a. (1) If the commissioner determines that an employer has

14 **[failed, for one or more of its employees, to maintain and report**

15 every record regarding wages, benefits and taxes which the

16 employer is required to maintain and report pursuant to State wage,

17 benefit and tax laws, as defined in section 1 of this act, and has, in

18 connection with that failure to maintain or report the records, failed

19 to pay wages, benefits, taxes or other contributions or assessments

20 as required by those laws] violated any State wage, benefit and tax

21 law, including but not limited to a violation of R.S.34:15-79, or

22 failed to meet obligations required by R.S.43:21-7 or R.S.43:21-14,

23 or violated any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or

24 P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner shall, as an

25 alternative to, or in addition to, any other actions taken in the

26 enforcement of those laws, notify the employer of the determination

27 and have an audit of the employer and any successor firm of the

28 employer conducted not more than 12 months after the

29 determination.

30 (2) If the commissioner is notified pursuant to subsection g. of

31 this section of a

32 conviction of an employer, the commissioner shall, as an alternative

33 to, or in addition to, any other actions taken in the enforcement of

34 the laws violated by the employer, have an audit of the employer

35 and any successor firm of the employer conducted not more than 12

36 months after receipt of the notification.

37 b. If, in an audit conducted pursuant to subsection a. of this

38 section, the commissioner determines that the employer or any

39 successor firm to the employer has continued in its failure to

40 maintain or report records as required by those laws or continued in

41 its failure to pay wages, benefits, taxes or other contributions or

42 assessments as required by those laws, or if the commissioner is

43 notified pursuant to subsection g. of this section of a conviction of

44 the employer and the offense resulting in the conviction occurred

45 subsequent to an audit conducted pursuant to subsection a. of this

46 section, the commissioner:

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1 (1) May, after affording the employer or successor firm notice
2 and an opportunity for a hearing in accordance with the provisions
3 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
4 1 et seq.), issue a written determination directing any appropriate
5 agency to suspend any one or more licenses that are held by the
6 employer or successor firm, for a period of time determined by the
7 commissioner. In determining the length of a suspension, the
8 commissioner shall consider any of the following factors which are
9 relevant:

10 (a) The number of employees for which the employer or
11 successor firm failed to maintain or report required records and pay
12 required wages, benefits, taxes or other contributions or
13 assessments;

14 (b) The total amount of wages, benefits, taxes or other
15 contributions or assessments not paid by the employer or successor
16 firm;

17 (c) Any other harm resulting from the violation;

18 (d) Whether the employer or successor firm made good faith
19 efforts to comply with any applicable requirements;

20 (e) The duration of the violation;

21 (f) The role of the directors, officers or principals of the
22 employer or successor firm in the violation;

23 (g) Any prior misconduct by the employer or successor firm;
24 and

25 (h) Any other factors the commissioner considers relevant; and

26 (2) Shall conduct a subsequent audit or inspection of the
27 employer or any successor firm of the employer not more than 12
28 months after the date of the commissioner's written determination.

29 c. If, in the subsequent audit or inspection conducted pursuant
30 to subsection b. of this section, the commissioner determines that
31 the employer or successor firm has continued in its failure to
32 maintain or report records as required pursuant to State wage,
33 benefit and tax laws, as defined in section 1 of this act, and
34 continued in its failure to pay wages, benefits, taxes or other
35 contributions or assessments as required by those laws, or if the
36 commissioner is notified pursuant to subsection g. of this section of
37 a conviction of the employer for an offense occurring after the audit
38 conducted pursuant to subsection b. of this section, the
39 commissioner, after affording the employer or successor firm notice
40 and an opportunity for a hearing in accordance with the provisions
41 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
42 1 et seq.), shall issue a written determination directing any
43 appropriate agency to permanently revoke any one or more licenses
44 that are held by the employer or any successor firm to the employer
45 and that are necessary to operate the employer or successor firm.

46 d. Upon receipt of any written determination of the
47 commissioner directing an agency to suspend or revoke a license

1 pursuant to this section, and notwithstanding any other law, the
2 agency shall immediately suspend or revoke the license.

3 e. In instances where an employee leasing company has
4 entered into an employee leasing agreement with a client company
5 pursuant to P.L.2001, c.260 (C.34:8-67 et seq.), any written
6 determination by the commissioner directing agencies to suspend an
7 employer license pursuant to subsection b. of this section, or revoke
8 an employer license pursuant to subsection c. of this section, for a
9 failure or continued failure to keep records regarding, and to pay,
10 wages, benefits and taxes pursuant to State wage, benefit and tax
11 laws, shall be for the suspension or revocation of the licenses of the
12 client company and not the licenses of the employee leasing
13 company if the commissioner determines that the failure or
14 continued failure was caused by incomplete, inaccurate, misleading,
15 or false information provided to the employee leasing company by
16 the client company. Nothing in this subsection shall be construed
17 as diminishing or limiting the authority or obligation of the
18 commissioner to rescind the registration of an employee leasing
19 company pursuant to the provisions of section 10 of P.L.2001,
20 c.260 (C.34:8-76).

21 f. If, in the course of an audit or inspection conducted pursuant
22 to this section, the commissioner discovers that an employee of the
23 employer or of any successor firm of the employer has failed to
24 provide compensation to the employee as required under any of the
25 State wage and hour laws as defined in R.S.34:11-57, then the
26 commissioner shall initiate a wage claim on behalf of the employee
27 pursuant to R.S.34:11-58.

28 g. Upon the conviction of an employer under subsection a. of
29 section 10 of P.L.1999, c.90 (C.2C:40A-2), section 13 of P.L.2019,
30 c.212 (C.34:11-58.6), subsection a. of section 10 of P.L.1965, c.173
31 (C.34:11-4.10), subsection a. of section 25 of P.L.1966, c.113
32 (C.34:11-56a24), or N.J.S.2C:20-2 if the property stolen consists of
33 compensation the employer failed to provide to an employee under
34 any State wage and hour law as defined in R.S.34:11-57, the
35 prosecutor or the court shall notify the commissioner of the
36 employer's conviction.

37 h. In the alternative to proceedings under the "Administrative
38 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in accordance
39 with the provisions of subsection b. of this section, and in addition
40 to any other actions taken in the enforcement of the laws violated
41 by any employer, the commissioner shall have the authority, to be
42 exercised in the commissioner's sole discretion, to bring
43 enforcement actions for any violation of any State wage, benefit and
44 tax law, including but not limited to a violation of R.S.34:15-79, or
45 a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-
46 14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-
47 21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), in the Office of
48 Administrative Law or in the Superior Court for the county in

1 which the violation occurred. When the commissioner, including
2 any of the commissioner's authorized representatives in the Office
3 of the Attorney General, brings an action in the Office of
4 Administrative Law or Superior Court which seeks relief on behalf
5 of any individual for any of the above violations, communications
6 between members of the Attorney General's office and that
7 individual shall be privileged as would be a communication
8 between an attorney and a client.

9 i. In any enforcement action brought under subsection h. of
10 this section, the commissioner, including any of the commissioner's
11 authorized representatives in the Office of the Attorney General,
12 may initiate the action by making, signing, and filing a verified
13 complaint against the employer. If the action is brought by the
14 commissioner in Superior Court, a jury trial may be requested upon
15 the application of any party. If the commissioner is a prevailing
16 plaintiff in the action, any and all remedies available by law shall be
17 available on behalf of any named or unnamed victims as if the
18 claims were brought directly by the victims. In addition to any
19 remedies sought on behalf of the named or unnamed victims, the
20 commissioner shall be entitled to seek any fines, penalties or
21 administrative assessments authorized by law, including but not
22 limited to penalties for misclassification set forth in section 1 of
23 P.L.2019, c.373 (C.34:1A-1.18). If the suit seeks relief for one or
24 more unnamed members of a class, the commissioner shall have the
25 discretion to settle the suit on the terms the commissioner deems
26 appropriate. If the commissioner is a prevailing plaintiff, the court
27 shall award reasonable attorney's fees and litigation and
28 investigation costs.

29 j. At any time after the filing of any verified complaint under
30 subsection i. of this section, or whenever it appears to the
31 commissioner that an employer has engaged in, is engaging in, or is
32 about to engage in, any violation of a State wage, benefit or tax law,
33 including a violation of R.S.34:15-79 or any failure to meet
34 obligations required by R.S.43:21-7 or R.S.43:21-14, or has
35 violated any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or
36 P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner may proceed
37 against the employer in a summary manner in the Superior Court of
38 New Jersey to obtain an injunction prohibiting the employer from
39 continuing or engaging in the violation or doing any acts in
40 furtherance of the violation, to compel compliance with any of the
41 provisions of this Title, or to prevent violations or attempts to
42 violate any of those provisions, or attempts to interfere with or
43 impede the enforcement of those provisions or the exercise or
44 performance of any power or duty under this Title. Prospective
45 injunctive relief against an employer shall also be available as a
46 remedy to the commissioner as a prevailing plaintiff in any
47 enforcement action under subsection i. of this section.

48 (cf: P.L.2019, c.212, s.1)

1 3. Section 1 of P.L.2019, c.372 (C.34:1A-1.17) is amended to
2 read as follows:

3 1. a. The Commissioner of Labor and Workforce Development
4 and any agent of the commissioner, upon receipt of a complaint or
5 through routine investigation for a violation of any State wage,
6 benefit and tax law, including but not limited to a violation of
7 R.S.34:15-79, or a failure to meet obligations required by
8 R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of
9 P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-
10 1 et al.), is authorized to enter, during usual business hours, the
11 place of business or employment of any employer of the individual
12 to determine compliance with those laws, and for that purpose may
13 examine payroll and other records and interview employees, call
14 hearings, administer oaths, take testimony under oath and take
15 interrogatories and oral depositions.

16 b. The commissioner may issue subpoenas for the attendance
17 of witnesses and the production of books and records. Any
18 **【employer or agent of the employer who willfully】** entity that fails
19 to furnish **【time and wage records as required by law to】**
20 information required by to the commissioner or agent of the
21 commissioner upon request, or who refuses to admit the
22 commissioner or agent to the place of employment of the employer,
23 or who hinders or delays the commissioner or agent in the
24 performance of duties in the enforcement of this section, may be
25 fined not less than \$1,000 and shall be guilty of a disorderly persons
26 offense. Each day of the failure to furnish the records to the
27 commissioner or agent shall constitute a separate offense, and each
28 day of refusal to admit, of hindering, or of delaying the
29 commissioner or agent shall constitute a separate offense.

30 In addition to the foregoing fines, and in addition to or as an
31 alternative to any criminal proceedings, if an entity fails to comply
32 with any subpoena lawfully issued, or upon the refusal of any
33 witness to testify to any matter regarding which the witness may be
34 lawfully interrogated, the commissioner may apply to the Superior
35 Court to compel obedience by proceedings for contempt, in the
36 same manner as in a failure to comply with the requirements of a
37 subpoena issued from the court or a refusal to testify in the court.

38 c. (1) If the commissioner determines, after either an initial
39 determination as a result of an audit of a business or an
40 investigation pursuant to subsection a. of this section, that an
41 employer is in violation of any State wage, benefit and tax law,
42 including but not limited to a violation of R.S.34:15-79, or a failure
43 to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for
44 a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.)
45 or P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner may issue
46 a stop-work order against the employer requiring cessation of all
47 business operations of the employer at **【the specific place of**

1 business or employment in which the violation exists] one or more
2 worksites or across all of the employer's worksites and places of
3 business. The stop-work order may be issued only against the
4 employer found to be in violation or non-compliance. The
5 commissioner shall serve a notification of intent to issue a stop-
6 work order on the employer at the place of business or, for a
7 particular employer worksite, at that worksite at least seven days
8 prior to the issuance of a stop-work order. The order shall be
9 effective when served upon the employer at the place of business
10 or, for a particular employer worksite, when served at that worksite.
11 The order shall remain in effect until the commissioner issues an
12 order releasing the stop-work order upon finding that the employer
13 has come into compliance and has paid any penalty deemed to be
14 satisfactory to the commissioner, or after the commissioner
15 determines, in a hearing held pursuant to paragraph (2) of this
16 subsection, that the employer did not commit the act on which the
17 order was based. The stop-work order shall be effective against any
18 successor entity engaged in the same or equivalent trade or activity
19 that has one or more of the same principals or officers as the
20 corporation, partnership, limited liability company, or sole
21 proprietorship against which the stop-work order was issued. The
22 commissioner may assess a civil penalty of \$5,000 per day against
23 an employer for each day that it conducts business operations that
24 are in violation of the stop-work order. A request for hearing shall
25 not automatically stay the effect of the order.

26 (2) An employer who is subject to a stop-work order shall,
27 within 72 hours of its receipt of the notification, have the right to
28 appeal to the commissioner in writing for an opportunity to be heard
29 and contest the stop-work order.

30 Within seven business days of receipt of the notification from the
31 employer, the commissioner shall hold a hearing to allow the
32 employer to contest the issuance of a stop-work order. The
33 department and the employer may present evidence and make any
34 arguments in support of their respective positions on the imposition
35 of the misclassification penalty. If a hearing is not held within
36 seven business days of receipt of the notification from the
37 employer, an administrative law judge shall have the authority to
38 release the stop-work order. The commissioner shall issue a written
39 decision within five business days of the hearing either upholding
40 or reversing the employer's stop-work order. The decision shall
41 include the grounds for upholding or reversing the employer's stop-
42 work order. If the employer disagrees with the written decision, the
43 employer may appeal the decision to the commissioner, in
44 accordance with the "Administrative Procedure Act," P.L.1968,
45 c.410 (C.52:14B-1 et seq.).

46 If the employer does not request an appeal to the commissioner
47 in writing, the stop-work order shall become a final order after the
48 expiration of the 72-hour period. The authority to assess a civil

1 penalty under paragraph (1) of this subsection shall be in addition to
2 any misclassification penalty assessed under section 1 of P.L.2019,
3 C.373 (C.34:1A-1.18) and all other enforcement provisions or
4 assessments issued for the employer's violation of any State wage,
5 benefit and tax law, including but not limited to a violation of
6 R.S.34:15-79, or a failure to meet obligations required by
7 R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of
8 P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-
9 1 et al.) The commissioner may set any civil penalty assessed under
10 this section in an amount the commissioner determines to be
11 appropriate.

12 Once the stop-work order becomes final, any employee affected
13 by a stop-work order issued pursuant to this section shall be entitled
14 to pay from the employer for the first ten days of work lost because
15 of the stop-work. Upon request of any employee not paid wages,
16 the commissioner can take assignment of the claim and bring any
17 legal action necessary to collect all that is due.

18 (3) As an alternative to issuing a stop-work order in accordance
19 with paragraph (1) of this subsection, if the commissioner
20 determines, after an investigation pursuant to subsection a. of this
21 section, that an employer is in violation of R.S.34:15-79, the
22 commissioner may provide and transfer all details and materials
23 related to the investigation under this section to the Director of the
24 Division of Workers' Compensation for any enforcement of
25 penalties or stop-work orders the director determines are
26 appropriate.

27 d. For purposes of this section:

28 "Employer" means any individual, partnership, association, joint
29 stock company, trust, corporation, the administrator or executor of
30 the estate of a deceased individual, or the receiver, trustee, or
31 successor of any of the same, employing any person in this State.
32 For the purposes of this subsection the officers of a corporation and
33 any agents having the management of such corporation shall be
34 deemed to be the employers of the employees of the corporation. In
35 addition, any members of a partnership or limited liability company
36 and any agents having the management of such partnership or
37 limited liability company shall be deemed to be employers of the
38 employees of the partnership or limited liability company.

39 "Employee" means any person suffered or permitted to work by
40 an employer, except a person performing services for remuneration
41 whose services satisfy the factors set forth in subparagraphs
42 (A),(B), and (C) of R.S.43:21-19(i)(6).

43 "Employ" means to suffer or permit to work.

44 "State wage, benefit and tax laws" means "State wage, benefit
45 and tax laws" as defined in section 1 of P.L.2009, c.194 (C.34:1A-
46 1.11).

47 e. Nothing in this section shall preclude an employer from
48 seeking injunctive relief from a court of competent jurisdiction if

1 the employer can demonstrate that the stop-work order would be
2 issued or has been issued in error.

3 (cf: P.L.2019, c.372, s.1)

4

5 4. Section 2 of P.L.2019, c.158 (C.34:20-7.1) is amended to
6 read as follows:

7 2. a. The Commissioner of Labor and Workforce Development
8 and any agent of the commissioner, upon receipt of a complaint or
9 through a routine investigation for a violation of any **【**wage and
10 hour law or **】** State wage, benefit and tax law, as defined in section 1
11 of P.L.2009, c.194 (C.34:1A-1.11), including but not limited to a
12 violation of R.S.34:15-79, or a failure to meet obligations as
13 provided in R.S.43:21-7 and R.S.43:21-14, or for a violation of any
14 provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989,
15 c.293 (C.34:15C-1 et al.), is authorized to enter, during usual
16 business hours, the place of business or employment of any
17 employer of the individual to determine compliance with the wage
18 and hour laws, R.S.34:15-79, R.S.43:21-7, or R.S.43:21-14, and for
19 that purpose may examine payroll and other records and interview
20 employees, call hearings, administer oaths, take testimony under
21 oath and take interrogatories and oral depositions.

22 b. The commissioner may issue subpoenas for the attendance
23 of witnesses and the production of books and records. Any
24 **【**employer or agent of the employer who willfully **】** entity that fails
25 to furnish **【**time and wage records as required by law to **】**
26 information required by the commissioner or agent of the
27 commissioner upon request, or who refuses to admit the
28 commissioner or agent to the place of employment of the employer,
29 or who hinders or delays the commissioner or agent in the
30 performance of duties in the enforcement of this section, may be
31 fined not less than \$1,000 and shall be guilty of a disorderly persons
32 offense. Each day of the failure to furnish the time and wage
33 records to the commissioner or agent shall constitute a separate
34 offense, and each day of refusal to admit, of hindering, or of
35 delaying the commissioner or agent shall constitute a separate
36 offense.

37 In addition to the foregoing fines, and in addition to or as an
38 alternative to any criminal proceedings, if an entity fails to comply
39 with any lawfully issued subpoena, or upon the refusal of any
40 witness to testify to any matter regarding which the witness may be
41 lawfully interrogated, the commissioner or the commissioner's
42 designee may apply to the Superior Court to compel obedience by
43 proceedings for contempt, in the same manner as in a failure to
44 comply with the requirements of a subpoena issued from the court
45 or a refusal to testify in the court.

46 c. (1) If the commissioner determines, after either an initial
47 determination as a result of an audit of a business or an

1 investigation pursuant to subsection a. of this section, that an
2 employer is in violation of any **【wage and hour law or】** State wage,
3 benefit and tax law, as defined in section 1 of P.L.2009, c.194
4 (C.34:1A-1.11), including but not limited to a violation of
5 R.S.34:15-79, or has failed to meet obligations as provided in
6 R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of
7 P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-
8 1 et al.), the commissioner may issue a stop-work order against the
9 employer requiring cessation of all business operations of the
10 employer at **【the specific place of business or employment in which**
11 **the violation exists】** one or more worksites or across all of the
12 employer's worksites and places of business. The stop-work order
13 may be issued only against the employer found to be in violation or
14 non-compliance. If a stop-work order has been issued against a
15 subcontractor pursuant to this subsection, the general contractor
16 shall retain the right to terminate the subcontractor from the project.
17 The order shall be effective when served upon the employer at the
18 place of business or, for a particular employer worksite, when
19 served at that worksite. The order shall remain in effect until the
20 commissioner issues an order releasing the stop-work order upon
21 finding that the employer has come into compliance and has paid
22 any penalty deemed to be satisfactory to the commissioner, or after
23 the commissioner determines, in a hearing held pursuant to
24 paragraph (2) of this subsection, that the employer did not commit
25 the act on which the order was based. The stop-work order shall be
26 effective against any successor entity engaged in the same or
27 equivalent trade or activity that has one or more of the same
28 principals or officers as the corporation, partnership, limited
29 liability company, or sole proprietorship against which the stop-
30 work order was issued.

31 (2) An employer who is subject to a stop-work order shall have
32 the right to appeal to the commissioner. The contractor may notify
33 the Director of the Division of Wage and Hour Compliance of its
34 request for an opportunity to be heard and contest the stop-work
35 order in writing within 72 hours of its receipt of the notification. A
36 request for hearing shall not automatically stay the effect of the
37 order.

38 Within seven business days of receipt of the notification from the
39 contractor, the director shall hold a hearing to allow the contractor
40 to contest the issuance of a **【stop work】** stop-work order. The
41 director shall permit the contractor to present evidence at the
42 hearing. If the director fails to hold a hearing within seven business
43 days of receipt of the notification from the contractor, an
44 administrative law judge shall have the authority to release the stop-
45 work order.

46 The director shall issue a written decision within five business
47 days of the hearing either upholding or reversing the contractor's

1 stop-work order. The decision shall include the grounds for
2 upholding or reversing the contractor's stop-work order.

3 If the contractor disagrees with the written decision, the
4 contractor may appeal the decision to the commissioner, in
5 accordance with the "Administrative Procedure Act," P.L.1968,
6 c.410 (C.52:14B-1 et seq.).

7 If the employer does not request an appeal to the commissioner
8 in writing, the stop-work order shall become a final order after the
9 expiration of the 72-hour period. The authority to assess a civil
10 penalty under paragraph (1) of this subsection shall be in addition to
11 any misclassification penalty assessed under this subsection and all
12 other enforcement provisions or assessments issued for the
13 employer's violation of any State wage, benefit and tax law,
14 including but not limited to a violation of R.S.34:15-79, or a failure
15 to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for
16 a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.)
17 or P.L.1989, c.293 (C.34:15C-1 et al.). The commission may
18 compromise any civil penalty assessed under this section in an
19 amount the commissioner determines to be appropriate.

20 Once the stop-work order becomes final, any employee affected
21 by a stop-work order issued pursuant to this section shall be entitled
22 to pay from the employer for the first ten days of work lost because
23 of the stop-work order. Upon request of any employee not paid
24 wages, the commissioner may take assignment of the claim and
25 bring any legal action necessary to collect all that is due.

26 (3) As an alternative to issuing a stop-work order in accordance
27 with paragraph (1) of this subsection, if the commissioner
28 determines, after an investigation pursuant to subsection a. of this
29 section, that an employer is in violation of R.S.34:15-79, the
30 commissioner may provide and transfer all details and materials
31 related to the investigation under this section to the Director of the
32 Division of Workers' Compensation for any enforcement of
33 penalties or stop-work orders the director determines are
34 appropriate.

35 (cf: P.L.2019, c.158, s.2)

36

37 5. Section 11 of P.L.1963, c.150 (C.34:11-56.35) is amended to
38 read as follows:

39 11. (a) Any employer who willfully hinders or delays the
40 commissioner in the performance of his duties in the enforcement of
41 this act, or fails to make, keep, and preserve any records as required
42 under the provisions of this act, or falsifies any such record, or
43 refuses to make any such record accessible to the commissioner
44 upon demand, or fails to timely respond to or furnish records
45 required by a subpoena issued by the commissioner, or refuses to
46 furnish a sworn statement of such record or any other information
47 required for the proper enforcement of this act to the commissioner

1 upon demand, or pays or agrees to pay wages at a rate less than the
2 rate applicable under this act or otherwise violates any provision of
3 this act or of any regulation or order issued under this act shall be
4 guilty of a disorderly persons offense and shall, upon conviction
5 therefor, be fined not less than \$100.00 nor more than \$1,000 or be
6 imprisoned for not less than 10 nor more than 90 days, or by both
7 such fine and imprisonment. Each week, in any day of which a
8 worker is paid less than the rate applicable to him under this act and
9 each worker so paid, shall constitute a separate offense. In addition
10 to the foregoing fines, and in addition to or as an alternative to any
11 criminal proceedings, if an employer fails to comply with any
12 lawfully issued subpoena, or on the refusal of any witness to testify
13 to any matter regarding which the witness may be lawfully
14 interrogated, the commissioner may apply to the Superior Court to
15 compel obedience by proceedings for contempt, in the same manner
16 as in failure to comply with the requirements of a subpoena issued
17 from the court or a refusal to testify in the court.

18 (b) As an alternative to or in addition to any other sanctions
19 provided by law for violations of any provision of P.L.1963, c.150
20 (C.34:11-56.25 et seq.), when the Commissioner of Labor and
21 Workforce Development finds that an employer has violated that
22 act, the commissioner is authorized to assess and collect
23 administrative penalties, up to a maximum of \$2,500 for a first
24 violation and up to a maximum of \$5,000 for each subsequent
25 violation, specified in a schedule of penalties to be promulgated as a
26 rule or regulation by the commissioner in accordance with the
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
28 seq.). When determining the amount of the penalty imposed because
29 of a violation, the commissioner shall consider factors which
30 include the history of previous violations by the employer, the
31 seriousness of the violation, the good faith of the employer and the
32 size of the employer's business. No administrative penalty shall be
33 levied pursuant to this section unless the Commissioner of Labor
34 and Workforce Development provides the alleged violator with
35 notification of the violation and of the amount of the penalty by
36 certified mail and an opportunity to request a hearing before the
37 commissioner or his designee within 15 days following the receipt
38 of the notice. If a hearing is requested, the commissioner shall issue
39 a final order upon such hearing and a finding that a violation has
40 occurred. If no hearing is requested, the notice shall become a final
41 order upon expiration of the 15-day period. Payment of the penalty
42 is due when a final order is issued or when the notice becomes a
43 final order. Any penalty imposed pursuant to this section may be
44 recovered with costs in a summary proceeding commenced by the
45 commissioner pursuant to the "Penalty Enforcement Law of 1999,"
46 P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine
47 or penalty pursuant to this section shall be applied toward

1 enforcement and administration costs of the Division of Workplace
2 Standards in the Department of Labor and Workforce Development.

3 (c) When the Commissioner of Labor and Workforce
4 Development finds that the employer has violated provisions of
5 P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may
6 refer the matter to the Attorney General or his designee for
7 investigation and prosecution. Nothing in this subsection shall be
8 deemed to limit the authority of the Attorney General to investigate
9 and prosecute violations of the New Jersey Code of Criminal
10 Justice, nor to limit the commissioner's ability to refer any matter
11 for criminal investigation or prosecution.

12 (d) If the commissioner makes an initial determination that an
13 employer has violated the provisions of P.L.1963, c.150 (C.34:11-
14 56.25 et seq.) by paying wages at rates less than the rates applicable
15 under that act, whether or not the commissioner refers the matter to
16 the Attorney General or other appropriate prosecutorial authority
17 for investigation or prosecution pursuant to subsection (c) of this
18 section, the commissioner may immediately issue a stop-work order
19 to cease all business operations at every site where the violation
20 has occurred one or more worksites or across all of the employer's
21 worksites and places of business. The stop-work order may be
22 issued only against the employer found to be in violation or non-
23 compliance. If a stop-work order has been issued against a
24 subcontractor pursuant to this subsection, the general contractor
25 shall retain the right to terminate the subcontractor from the project.
26 The stop-work order shall remain in effect until the commissioner
27 issues an order releasing the stop-work order upon finding that the
28 employer has agreed to pay wages at the required rate and has paid
29 any wages due and any penalty deemed satisfactory to the
30 commissioner. Once the stop-work order is issued, any employee
31 affected by a stop-work order issued pursuant to this section shall
32 be entitled to pay from the employer for the first ten days of work
33 lost because of the stop-work order. Upon request of any employee
34 not paid wages, the commissioner can take assignment of the claim
35 and bring any legal action necessary to collect all that is due. As a
36 condition for release from a stop-work order, the commissioner may
37 require the employer to file with the department periodic reports for
38 a probationary period that shall not exceed two years that
39 demonstrate the employer's continued compliance with the
40 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). The
41 commissioner may assess a civil penalty of \$5,000 per day against
42 an employer for each day that it conducts business operations that
43 are in violation of the stop-work order. That penalty shall be
44 collected by the commissioner in a summary proceeding in
45 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
46 c.274 (C.2A:58-10 et seq.).
47 (cf: P.L.2019, c.158, s.1)

1 6. Section 8 of P.L.2019, c.212 (C.34:11-58.1) is amended to
2 read as follows:

3 8. a. If an employer fails to comply with a final determination
4 of the commissioner or a judgment of a court, including a small
5 claims court, made under the provisions of State wage and hour
6 laws or of section 10 of P.L.1999, c.90 (C.2C:40-2), to pay an
7 employee any wages owed or damages awarded within ten days of
8 the time that the determination or judgement requires the payment,
9 the commissioner may do either or both of the following:

10 (1) issue, in the manner provided in subsection b. of section 2 of
11 P.L.2009, c.194 (C.34:1A-1.12), a written determination directing
12 any appropriate agency to suspend one or more licenses held by the
13 employer or any successor firm of the employer until the employer
14 complies with the determination or judgement; or

15 (2) issue a **【stop work】** stop-work order against the violators
16 requiring the cessation of all business operations **【of the violator.**
17 **The stop work order may only be issued against the individual or**
18 **entity found to be in violation, and only as to the specific place of**
19 **business or employment for which the violation exists】** at one or
20 more worksites or across all of the employer's worksites and places
21 of business. The **【stop work】** stop-work order shall be effective
22 when served upon the violator or at a place of business or
23 employment by posting a copy of the **【stop work】** stop-work order
24 in a conspicuous location at the place of business or employment.
25 The **【stop work】** stop-work order shall remain in effect until the
26 commissioner issues an order releasing the **【stop work】** stop-work
27 order upon a finding that the violation has been corrected. As a
28 condition of release of a stop-work order under this section, the
29 commissioner may require the employer against whom the stop-
30 work order had been issued to file with the department periodic
31 reports for a probationary period of two years. The commissioner
32 may assess a civil penalty of \$5,000 per day against an employer for
33 each day that it conducts business operations that are in violation of
34 the stop-work order. That penalty shall be collected by the
35 commissioner in a summary proceeding in accordance with the
36 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
37 et seq.).

38 b. **【Stop work】** Stop-work orders and any penalties imposed
39 under a **【stop work】** stop-work order against a corporation,
40 partnership, limited liability corporation, or sole proprietorship shall
41 be effective against any successor entity that has one or more of the
42 same principals or officers as the corporation, partnership, or sole
43 proprietorship against which the **【stop work】** stop-work order was
44 issued and that is engaged in the same or equivalent trade or
45 activity.

1 c. Any employee affected by a **【stop work】** stop-work order
2 issued pursuant to this section shall be paid by the employer for the
3 first ten days of work lost because of the **【stop work】** stop-work
4 order.

5 d. A rebuttable presumption that an employer has established a
6 successor entity shall arise if the two share at least two of the
7 following capacities or characteristics:

- 8 (1) perform similar work within the same geographical area;
- 9 (2) occupy the same premises;
- 10 (3) have the same telephone or fax number;
- 11 (4) have the same email address or Internet website;
- 12 (5) employ substantially the same work force, administrative
13 employees, or both;
- 14 (6) utilize the same tools, facilities, or equipment;
- 15 (7) employ or engage the services of any person or persons
16 involved in the direction or control of the other; or
- 17 (8) list substantially the same work experience.

18 (cf: P.L.2019, c.212, s.8)

19

20 7. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 This bill provides the Commissioner of Labor and Workforce
26 Development, with respect to violations of State wage, benefit and
27 tax laws, additional enforcement options in the Office of
28 Administrative Law and in the courts, including subpoena powers
29 and injunctive relief. The bill permits the stop-work orders
30 currently permitted for violations of those laws to be applied to all
31 worksites of a violator, provides penalties of \$5,000 per day for a
32 failure to comply with a stop-work order, and entitles employees to
33 pay from their employers for the first ten days of a stop-work order.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5890

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 16, 2021

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5890, with committee amendments.

As amended, this bill provides the Commissioner of Labor and Workforce Development, with respect to violations of State wage, benefit and tax laws, additional enforcement options in the Office of Administrative Law and in the courts, including subpoena powers and injunctive relief. The bill permits the stop-work orders currently permitted for violations of those laws to be applied to all worksites of a violator, provides penalties of \$5,000 per day for a failure to comply with a stop-work order, and entitles employees to pay from their employers for the first ten days of a stop-work order.

COMMITTEE AMENDMENTS:

The committee amended the bill to provide that the commissioner may compromise certain civil penalties assessed under the bill in amounts the commissioner determines to be appropriate.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

SENATE, No. 3920

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 10, 2021

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Co-Sponsored by:

Senator Singleton

SYNOPSIS

Concerns enforcement of employee misclassification and stop-work order laws.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/15/2021)

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2

1 AN ACT concerning enforcement of various laws regarding
2 employee misclassification and stop-work orders, and amending
3 various parts of the statutory law.

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.2019, c.194 (C.34:1A-1.11) is amended to
9 read as follows:

10 1. As used in this act:

11 "Agency" means any agency, department, board or commission
12 of this State, or of any political subdivision of this State, that issues
13 a license for purposes of operating a business in this State.

14 "Commissioner" means the Commissioner of Labor and
15 Workforce Development, and shall include any designee, authorized
16 representative, or agent acting on behalf of the commissioner.

17 "License" means any agency permit, certificate, approval,
18 registration, charter or similar form of authorization that is required
19 by law and that is issued by any agency for the purposes of
20 operating a business in this State, and includes, but is not limited to:

21 (1) A certificate of incorporation pursuant to the "New Jersey
22 Business Corporation Act," N.J.S.14A:1-1 et seq.;

23 (2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.;

24 (3) A statement of qualification or a statement of foreign
25 qualification pursuant to the "Uniform Partnership Act (1996),"
26 P.L.2000, c.161 (C.42:1A-1 et al.);

27 (4) A certificate of limited partnership or a certificate of
28 authority pursuant to the "Uniform Limited Partnership Law
29 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

30 (5) A certificate of formation or certified registration pursuant
31 to the "New Jersey Limited Liability Company Act," P.L.1993,
32 c.210 (C.42:2B-1 et seq.); and

33 (6) Any license, certificate, permit or registration pursuant to
34 R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey
35 Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of
36 P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.);
37 section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of
38 P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor
39 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

40 "State wage, benefit and tax laws" means:

41 (1) P.L.1965, c.173 (C.34:11-4.1 et seq.);

42 (2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150
43 (C.34:11-56.25 et seq.);

44 (3) The "New Jersey State Wage and Hour Law," P.L.1966,
45 c.113 (C.34:11-56a et seq.);

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.

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- 1 (4) The workers' compensation law, R.S.34:15-1 et seq.;
- 2 (5) The "unemployment compensation law," R.S.43:21-1 et seq.;
- 3 (6) The "Temporary Disability Benefits Law," P.L.1948, c.110
- 4 (C.43:21-25 et al.);
- 5 (7) P.L.2008, c.17 (C.43:21-39.1 et al.); **and**
- 6 (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
- 7 seq.; and
- 8 (9) P.L.2018, c.10 (C.34:11D-1 et seq.).
- 9 (cf: P.L.2009, c.194, s.1)

10

11 2. Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is amended to

12 read as follows:

13 2. a. (1) If the commissioner determines that an employer has

14 **failed, for one or more of its employees, to maintain and report**

15 every record regarding wages, benefits and taxes which the

16 employer is required to maintain and report pursuant to State wage,

17 benefit and tax laws, as defined in section 1 of this act, and has, in

18 connection with that failure to maintain or report the records, failed

19 to pay wages, benefits, taxes or other contributions or assessments

20 as required by those laws **violated any State wage, benefit and tax**

21 law, including but not limited to a violation of R.S.34:15-79, or

22 failed to meet obligations required by R.S.43:21-7 or R.S.43:21-14,

23 or violated any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or

24 P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner shall, as an

25 alternative to, or in addition to, any other actions taken in the

26 enforcement of those laws, notify the employer of the determination

27 and have an audit of the employer and any successor firm of the

28 employer conducted not more than 12 months after the

29 determination.

30 (2) If the commissioner is notified pursuant to subsection g. of

31 this section of a

32 conviction of an employer, the commissioner shall, as an alternative

33 to, or in addition to, any other actions taken in the enforcement of

34 the laws violated by the employer, have an audit of the employer

35 and any successor firm of the employer conducted not more than 12

36 months after receipt of the notification.

37 b. If, in an audit conducted pursuant to subsection a. of this

38 section, the commissioner determines that the employer or any

39 successor firm to the employer has continued in its failure to

40 maintain or report records as required by those laws or continued in

41 its failure to pay wages, benefits, taxes or other contributions or

42 assessments as required by those laws, or if the commissioner is

43 notified pursuant to subsection g. of this section of a conviction of

44 the employer and the offense resulting in the conviction occurred

45 subsequent to an audit conducted pursuant to subsection a. of this

46 section, the commissioner:

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1 (1) May, after affording the employer or successor firm notice
2 and an opportunity for a hearing in accordance with the provisions
3 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
4 1 et seq.), issue a written determination directing any appropriate
5 agency to suspend any one or more licenses that are held by the
6 employer or successor firm, for a period of time determined by the
7 commissioner. In determining the length of a suspension, the
8 commissioner shall consider any of the following factors which are
9 relevant:

10 (a) The number of employees for which the employer or
11 successor firm failed to maintain or report required records and pay
12 required wages, benefits, taxes or other contributions or
13 assessments;

14 (b) The total amount of wages, benefits, taxes or other
15 contributions or assessments not paid by the employer or successor
16 firm;

17 (c) Any other harm resulting from the violation;

18 (d) Whether the employer or successor firm made good faith
19 efforts to comply with any applicable requirements;

20 (e) The duration of the violation;

21 (f) The role of the directors, officers or principals of the
22 employer or successor firm in the violation;

23 (g) Any prior misconduct by the employer or successor firm;
24 and

25 (h) Any other factors the commissioner considers relevant; and

26 (2) Shall conduct a subsequent audit or inspection of the
27 employer or any successor firm of the employer not more than 12
28 months after the date of the commissioner's written determination.

29 c. If, in the subsequent audit or inspection conducted pursuant
30 to subsection b. of this section, the commissioner determines that
31 the employer or successor firm has continued in its failure to
32 maintain or report records as required pursuant to State wage,
33 benefit and tax laws, as defined in section 1 of this act, and
34 continued in its failure to pay wages, benefits, taxes or other
35 contributions or assessments as required by those laws, or if the
36 commissioner is notified pursuant to subsection g. of this section of
37 a conviction of the employer for an offense occurring after the audit
38 conducted pursuant to subsection b. of this section, the
39 commissioner, after affording the employer or successor firm notice
40 and an opportunity for a hearing in accordance with the provisions
41 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
42 1 et seq.), shall issue a written determination directing any
43 appropriate agency to permanently revoke any one or more licenses
44 that are held by the employer or any successor firm to the employer
45 and that are necessary to operate the employer or successor firm.

46 d. Upon receipt of any written determination of the
47 commissioner directing an agency to suspend or revoke a license

1 pursuant to this section, and notwithstanding any other law, the
2 agency shall immediately suspend or revoke the license.

3 e. In instances where an employee leasing company has
4 entered into an employee leasing agreement with a client company
5 pursuant to P.L.2001, c.260 (C.34:8-67 et seq.), any written
6 determination by the commissioner directing agencies to suspend an
7 employer license pursuant to subsection b. of this section, or revoke
8 an employer license pursuant to subsection c. of this section, for a
9 failure or continued failure to keep records regarding, and to pay,
10 wages, benefits and taxes pursuant to State wage, benefit and tax
11 laws, shall be for the suspension or revocation of the licenses of the
12 client company and not the licenses of the employee leasing
13 company if the commissioner determines that the failure or
14 continued failure was caused by incomplete, inaccurate, misleading,
15 or false information provided to the employee leasing company by
16 the client company. Nothing in this subsection shall be construed
17 as diminishing or limiting the authority or obligation of the
18 commissioner to rescind the registration of an employee leasing
19 company pursuant to the provisions of section 10 of P.L.2001,
20 c.260 (C.34:8-76).

21 f. If, in the course of an audit or inspection conducted pursuant
22 to this section, the commissioner discovers that an employee of the
23 employer or of any successor firm of the employer has failed to
24 provide compensation to the employee as required under any of the
25 State wage and hour laws as defined in R.S.34:11-57, then the
26 commissioner shall initiate a wage claim on behalf of the employee
27 pursuant to R.S.34:11-58.

28 g. Upon the conviction of an employer under subsection a. of
29 section 10 of P.L.1999, c.90 (C.2C:40A-2), section 13 of P.L.2019,
30 c.212 (C.34:11-58.6), subsection a. of section 10 of P.L.1965, c.173
31 (C.34:11-4.10), subsection a. of section 25 of P.L.1966, c.113
32 (C.34:11-56a24), or N.J.S.2C:20-2 if the property stolen consists of
33 compensation the employer failed to provide to an employee under
34 any State wage and hour law as defined in R.S.34:11-57, the
35 prosecutor or the court shall notify the commissioner of the
36 employer's conviction.

37 h. In the alternative to proceedings under the "Administrative
38 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in accordance
39 with the provisions of subsection b. of this section, and in addition
40 to any other actions taken in the enforcement of the laws violated
41 by any employer, the commissioner shall have the authority, to be
42 exercised in the commissioner's sole discretion, to bring
43 enforcement actions for any violation of any State wage, benefit and
44 tax law, including but not limited to a violation of R.S.34:15-79, or
45 a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-
46 14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-
47 21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), in the Office of
48 Administrative Law or in the Superior Court for the county in

1 which the violation occurred. When the commissioner, including
2 any of the commissioner's authorized representatives in the Office
3 of the Attorney General, brings an action in the Office of
4 Administrative Law or Superior Court which seeks relief on behalf
5 of any individual for any of the above violations, communications
6 between members of the Attorney General's office and that
7 individual shall be privileged as would be a communication
8 between an attorney and a client.

9 i. In any enforcement action brought under subsection h. of
10 this section, the commissioner, including any of the commissioner's
11 authorized representatives in the Office of the Attorney General,
12 may initiate the action by making, signing, and filing a verified
13 complaint against the employer. If the action is brought by the
14 commissioner in Superior Court, a jury trial may be requested upon
15 the application of any party. If the commissioner is a prevailing
16 plaintiff in the action, any and all remedies available by law shall be
17 available on behalf of any named or unnamed victims as if the
18 claims were brought directly by the victims. In addition to any
19 remedies sought on behalf of the named or unnamed victims, the
20 commissioner shall be entitled to seek any fines, penalties or
21 administrative assessments authorized by law, including but not
22 limited to penalties for misclassification set forth in section 1 of
23 P.L.2019, c.373 (C.34:1A-1.18). If the suit seeks relief for one or
24 more unnamed members of a class, the commissioner shall have the
25 discretion to settle the suit on the terms the commissioner deems
26 appropriate. If the commissioner is a prevailing plaintiff, the court
27 shall award reasonable attorney's fees and litigation and
28 investigation costs.

29 j. At any time after the filing of any verified complaint under
30 subsection i. of this section, or whenever it appears to the
31 commissioner that an employer has engaged in, is engaging in, or is
32 about to engage in, any violation of a State wage, benefit or tax law,
33 including a violation of R.S.34:15-79 or any failure to meet
34 obligations required by R.S.43:21-7 or R.S.43:21-14, or has
35 violated any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or
36 P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner may proceed
37 against the employer in a summary manner in the Superior Court of
38 New Jersey to obtain an injunction prohibiting the employer from
39 continuing or engaging in the violation or doing any acts in
40 furtherance of the violation, to compel compliance with any of the
41 provisions of this Title, or to prevent violations or attempts to
42 violate any of those provisions, or attempts to interfere with or
43 impede the enforcement of those provisions or the exercise or
44 performance of any power or duty under this Title. Prospective
45 injunctive relief against an employer shall also be available as a
46 remedy to the commissioner as a prevailing plaintiff in any
47 enforcement action under subsection i. of this section.

48 (cf: P.L.2019, c.212, s.1)

1 3. Section 1 of P.L.2019, c.372 (C.34:1A-1.17) is amended to
2 read as follows:

3 1. a. The Commissioner of Labor and Workforce Development
4 and any agent of the commissioner, upon receipt of a complaint or
5 through routine investigation for a violation of any State wage,
6 benefit and tax law, including but not limited to a violation of
7 R.S.34:15-79, or a failure to meet obligations required by
8 R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of
9 P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-
10 1 et al.), is authorized to enter, during usual business hours, the
11 place of business or employment of any employer of the individual
12 to determine compliance with those laws, and for that purpose may
13 examine payroll and other records and interview employees, call
14 hearings, administer oaths, take testimony under oath and take
15 interrogatories and oral depositions.

16 b. The commissioner may issue subpoenas for the attendance
17 of witnesses and the production of books and records. Any
18 **【employer or agent of the employer who willfully】** entity that fails
19 to furnish **【time and wage records as required by law to】**
20 information required by to the commissioner or agent of the
21 commissioner upon request, or who refuses to admit the
22 commissioner or agent to the place of employment of the employer,
23 or who hinders or delays the commissioner or agent in the
24 performance of duties in the enforcement of this section, may be
25 fined not less than \$1,000 and shall be guilty of a disorderly persons
26 offense. Each day of the failure to furnish the records to the
27 commissioner or agent shall constitute a separate offense, and each
28 day of refusal to admit, of hindering, or of delaying the
29 commissioner or agent shall constitute a separate offense.

30 In addition to the foregoing fines, and in addition to or as an
31 alternative to any criminal proceedings, if an entity fails to comply
32 with any subpoena lawfully issued, or upon the refusal of any
33 witness to testify to any matter regarding which the witness may be
34 lawfully interrogated, the commissioner may apply to the Superior
35 Court to compel obedience by proceedings for contempt, in the
36 same manner as in a failure to comply with the requirements of a
37 subpoena issued from the court or a refusal to testify in the court.

38 c. (1) If the commissioner determines, after either an initial
39 determination as a result of an audit of a business or an
40 investigation pursuant to subsection a. of this section, that an
41 employer is in violation of any State wage, benefit and tax law,
42 including but not limited to a violation of R.S.34:15-79, or a failure
43 to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for
44 a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.)
45 or P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner may issue
46 a stop-work order against the employer requiring cessation of all
47 business operations of the employer at **【the specific place of**

1 business or employment in which the violation exists] one or more
2 worksites or across all of the employer's worksites and places of
3 business. The stop-work order may be issued only against the
4 employer found to be in violation or non-compliance. The
5 commissioner shall serve a notification of intent to issue a stop-
6 work order on the employer at the place of business or, for a
7 particular employer worksite, at that worksite at least seven days
8 prior to the issuance of a stop-work order. The order shall be
9 effective when served upon the employer at the place of business
10 or, for a particular employer worksite, when served at that worksite.
11 The order shall remain in effect until the commissioner issues an
12 order releasing the stop-work order upon finding that the employer
13 has come into compliance and has paid any penalty deemed to be
14 satisfactory to the commissioner, or after the commissioner
15 determines, in a hearing held pursuant to paragraph (2) of this
16 subsection, that the employer did not commit the act on which the
17 order was based. The stop-work order shall be effective against any
18 successor entity engaged in the same or equivalent trade or activity
19 that has one or more of the same principals or officers as the
20 corporation, partnership, limited liability company, or sole
21 proprietorship against which the stop-work order was issued. The
22 commissioner may assess a civil penalty of \$5,000 per day against
23 an employer for each day that it conducts business operations that
24 are in violation of the stop-work order. A request for hearing shall
25 not automatically stay the effect of the order.

26 (2) An employer who is subject to a stop-work order shall,
27 within 72 hours of its receipt of the notification, have the right to
28 appeal to the commissioner in writing for an opportunity to be heard
29 and contest the stop-work order.

30 Within seven business days of receipt of the notification from the
31 employer, the commissioner shall hold a hearing to allow the
32 employer to contest the issuance of a stop-work order. The
33 department and the employer may present evidence and make any
34 arguments in support of their respective positions on the imposition
35 of the misclassification penalty. If a hearing is not held within
36 seven business days of receipt of the notification from the
37 employer, an administrative law judge shall have the authority to
38 release the stop-work order. The commissioner shall issue a written
39 decision within five business days of the hearing either upholding
40 or reversing the employer's stop-work order. The decision shall
41 include the grounds for upholding or reversing the employer's stop-
42 work order. If the employer disagrees with the written decision, the
43 employer may appeal the decision to the commissioner, in
44 accordance with the "Administrative Procedure Act," P.L.1968,
45 c.410 (C.52:14B-1 et seq.).

46 If the employer does not request an appeal to the commissioner
47 in writing, the stop-work order shall become a final order after the
48 expiration of the 72-hour period. The authority to assess a civil

1 penalty under paragraph (1) of this subsection shall be in addition to
2 any misclassification penalty assessed under section 1 of P.L.2019,
3 C.373 (C.34:1A-1.18) and all other enforcement provisions or
4 assessments issued for the employer's violation of any State wage,
5 benefit and tax law, including but not limited to a violation of
6 R.S.34:15-79, or a failure to meet obligations required by
7 R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of
8 P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-
9 1 et al.) The commissioner may set any civil penalty assessed under
10 this section in an amount the commissioner determines to be
11 appropriate.

12 Once the stop-work order becomes final, any employee affected
13 by a stop-work order issued pursuant to this section shall be entitled
14 to pay from the employer for the first ten days of work lost because
15 of the stop-work. Upon request of any employee not paid wages,
16 the commissioner can take assignment of the claim and bring any
17 legal action necessary to collect all that is due.

18 (3) As an alternative to issuing a stop-work order in accordance
19 with paragraph (1) of this subsection, if the commissioner
20 determines, after an investigation pursuant to subsection a. of this
21 section, that an employer is in violation of R.S.34:15-79, the
22 commissioner may provide and transfer all details and materials
23 related to the investigation under this section to the Director of the
24 Division of Workers' Compensation for any enforcement of
25 penalties or stop-work orders the director determines are
26 appropriate.

27 d. For purposes of this section:

28 "Employer" means any individual, partnership, association, joint
29 stock company, trust, corporation, the administrator or executor of
30 the estate of a deceased individual, or the receiver, trustee, or
31 successor of any of the same, employing any person in this State.
32 For the purposes of this subsection the officers of a corporation and
33 any agents having the management of such corporation shall be
34 deemed to be the employers of the employees of the corporation. In
35 addition, any members of a partnership or limited liability company
36 and any agents having the management of such partnership or
37 limited liability company shall be deemed to be employers of the
38 employees of the partnership or limited liability company.

39 "Employee" means any person suffered or permitted to work by
40 an employer, except a person performing services for remuneration
41 whose services satisfy the factors set forth in subparagraphs
42 (A),(B), and (C) of R.S.43:21-19(i)(6).

43 "Employ" means to suffer or permit to work.

44 "State wage, benefit and tax laws" means "State wage, benefit
45 and tax laws" as defined in section 1 of P.L.2009, c.194 (C.34:1A-
46 1.11).

47 e. Nothing in this section shall preclude an employer from
48 seeking injunctive relief from a court of competent jurisdiction if

1 the employer can demonstrate that the stop-work order would be
2 issued or has been issued in error.

3 (cf: P.L.2019, c.372, s.1)

4

5 4. Section 2 of P.L.2019, c.158 (C.34:20-7.1) is amended to
6 read as follows:

7 2. a. The Commissioner of Labor and Workforce Development
8 and any agent of the commissioner, upon receipt of a complaint or
9 through a routine investigation for a violation of any **【**wage and
10 hour law or **】** State wage, benefit and tax law, as defined in section 1
11 of P.L.2009, c.194 (C.34:1A-1.11), including but not limited to a
12 violation of R.S.34:15-79, or a failure to meet obligations as
13 provided in R.S.43:21-7 and R.S.43:21-14, or for a violation of any
14 provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989,
15 c.293 (C.34:15C-1 et al.), is authorized to enter, during usual
16 business hours, the place of business or employment of any
17 employer of the individual to determine compliance with the wage
18 and hour laws, R.S.34:15-79, R.S.43:21-7, or R.S.43:21-14, and for
19 that purpose may examine payroll and other records and interview
20 employees, call hearings, administer oaths, take testimony under
21 oath and take interrogatories and oral depositions.

22 b. The commissioner may issue subpoenas for the attendance
23 of witnesses and the production of books and records. Any
24 **【**employer or agent of the employer who willfully **】** entity that fails
25 to furnish **【**time and wage records as required by law to **】**
26 information required by the commissioner or agent of the
27 commissioner upon request, or who refuses to admit the
28 commissioner or agent to the place of employment of the employer,
29 or who hinders or delays the commissioner or agent in the
30 performance of duties in the enforcement of this section, may be
31 fined not less than \$1,000 and shall be guilty of a disorderly persons
32 offense. Each day of the failure to furnish the time and wage
33 records to the commissioner or agent shall constitute a separate
34 offense, and each day of refusal to admit, of hindering, or of
35 delaying the commissioner or agent shall constitute a separate
36 offense.

37 In addition to the foregoing fines, and in addition to or as an
38 alternative to any criminal proceedings, if an entity fails to comply
39 with any lawfully issued subpoena, or upon the refusal of any
40 witness to testify to any matter regarding which the witness may be
41 lawfully interrogated, the commissioner or the commissioner's
42 designee may apply to the Superior Court to compel obedience by
43 proceedings for contempt, in the same manner as in a failure to
44 comply with the requirements of a subpoena issued from the court
45 or a refusal to testify in the court.

46 c. (1) If the commissioner determines, after either an initial
47 determination as a result of an audit of a business or an

1 investigation pursuant to subsection a. of this section, that an
2 employer is in violation of any **【wage and hour law or】** State wage,
3 benefit and tax law, as defined in section 1 of P.L.2009, c.194
4 (C.34:1A-1.11), including but not limited to a violation of
5 R.S.34:15-79, or has failed to meet obligations as provided in
6 R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of
7 P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-
8 1 et al.), the commissioner may issue a stop-work order against the
9 employer requiring cessation of all business operations of the
10 employer at **【the specific place of business or employment in which**
11 **the violation exists】** one or more worksites or across all of the
12 employer's worksites and places of business. The stop-work order
13 may be issued only against the employer found to be in violation or
14 non-compliance. If a stop-work order has been issued against a
15 subcontractor pursuant to this subsection, the general contractor
16 shall retain the right to terminate the subcontractor from the project.
17 The order shall be effective when served upon the employer at the
18 place of business or, for a particular employer worksite, when
19 served at that worksite. The order shall remain in effect until the
20 commissioner issues an order releasing the stop-work order upon
21 finding that the employer has come into compliance and has paid
22 any penalty deemed to be satisfactory to the commissioner, or after
23 the commissioner determines, in a hearing held pursuant to
24 paragraph (2) of this subsection, that the employer did not commit
25 the act on which the order was based. The stop-work order shall be
26 effective against any successor entity engaged in the same or
27 equivalent trade or activity that has one or more of the same
28 principals or officers as the corporation, partnership, limited
29 liability company, or sole proprietorship against which the stop-
30 work order was issued.

31 (2) An employer who is subject to a stop-work order shall have
32 the right to appeal to the commissioner. The contractor may notify
33 the Director of the Division of Wage and Hour Compliance of its
34 request for an opportunity to be heard and contest the stop-work
35 order in writing within 72 hours of its receipt of the notification. A
36 request for hearing shall not automatically stay the effect of the
37 order.

38 Within seven business days of receipt of the notification from the
39 contractor, the director shall hold a hearing to allow the contractor
40 to contest the issuance of a **【stop work】** stop-work order. The
41 director shall permit the contractor to present evidence at the
42 hearing. If the director fails to hold a hearing within seven business
43 days of receipt of the notification from the contractor, an
44 administrative law judge shall have the authority to release the stop-
45 work order.

46 The director shall issue a written decision within five business
47 days of the hearing either upholding or reversing the contractor's

1 stop-work order. The decision shall include the grounds for
2 upholding or reversing the contractor's stop-work order.

3 If the contractor disagrees with the written decision, the
4 contractor may appeal the decision to the commissioner, in
5 accordance with the "Administrative Procedure Act," P.L.1968,
6 c.410 (C.52:14B-1 et seq.).

7 If the employer does not request an appeal to the commissioner
8 in writing, the stop-work order shall become a final order after the
9 expiration of the 72-hour period. The authority to assess a civil
10 penalty under paragraph (1) of this subsection shall be in addition to
11 any misclassification penalty assessed under this subsection and all
12 other enforcement provisions or assessments issued for the
13 employer's violation of any State wage, benefit and tax law,
14 including but not limited to a violation of R.S.34:15-79, or a failure
15 to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for
16 a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.)
17 or P.L.1989, c.293 (C.34:15C-1 et al.). The commission may
18 compromise any civil penalty assessed under this section in an
19 amount the commissioner determines to be appropriate.

20 Once the stop-work order becomes final, any employee affected
21 by a stop-work order issued pursuant to this section shall be entitled
22 to pay from the employer for the first ten days of work lost because
23 of the stop-work order. Upon request of any employee not paid
24 wages, the commissioner may take assignment of the claim and
25 bring any legal action necessary to collect all that is due.

26 (3) As an alternative to issuing a stop-work order in accordance
27 with paragraph (1) of this subsection, if the commissioner
28 determines, after an investigation pursuant to subsection a. of this
29 section, that an employer is in violation of R.S.34:15-79, the
30 commissioner may provide and transfer all details and materials
31 related to the investigation under this section to the Director of the
32 Division of Workers' Compensation for any enforcement of
33 penalties or stop-work orders the director determines are
34 appropriate.

35 (cf: P.L.2019, c.158, s.2)

36

37 5. Section 11 of P.L.1963, c.150 (C.34:11-56.35) is amended to
38 read as follows:

39 11. (a) Any employer who willfully hinders or delays the
40 commissioner in the performance of his duties in the enforcement of
41 this act, or fails to make, keep, and preserve any records as required
42 under the provisions of this act, or falsifies any such record, or
43 refuses to make any such record accessible to the commissioner
44 upon demand, or fails to timely respond to or furnish records
45 required by a subpoena issued by the commissioner, or refuses to
46 furnish a sworn statement of such record or any other information
47 required for the proper enforcement of this act to the commissioner

1 upon demand, or pays or agrees to pay wages at a rate less than the
2 rate applicable under this act or otherwise violates any provision of
3 this act or of any regulation or order issued under this act shall be
4 guilty of a disorderly persons offense and shall, upon conviction
5 therefor, be fined not less than \$100.00 nor more than \$1,000 or be
6 imprisoned for not less than 10 nor more than 90 days, or by both
7 such fine and imprisonment. Each week, in any day of which a
8 worker is paid less than the rate applicable to him under this act and
9 each worker so paid, shall constitute a separate offense. In addition
10 to the foregoing fines, and in addition to or as an alternative to any
11 criminal proceedings, if an employer fails to comply with any
12 lawfully issued subpoena, or on the refusal of any witness to testify
13 to any matter regarding which the witness may be lawfully
14 interrogated, the commissioner may apply to the Superior Court to
15 compel obedience by proceedings for contempt, in the same manner
16 as in failure to comply with the requirements of a subpoena issued
17 from the court or a refusal to testify in the court.

18 (b) As an alternative to or in addition to any other sanctions
19 provided by law for violations of any provision of P.L.1963, c.150
20 (C.34:11-56.25 et seq.), when the Commissioner of Labor and
21 Workforce Development finds that an employer has violated that
22 act, the commissioner is authorized to assess and collect
23 administrative penalties, up to a maximum of \$2,500 for a first
24 violation and up to a maximum of \$5,000 for each subsequent
25 violation, specified in a schedule of penalties to be promulgated as a
26 rule or regulation by the commissioner in accordance with the
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
28 seq.). When determining the amount of the penalty imposed because
29 of a violation, the commissioner shall consider factors which
30 include the history of previous violations by the employer, the
31 seriousness of the violation, the good faith of the employer and the
32 size of the employer's business. No administrative penalty shall be
33 levied pursuant to this section unless the Commissioner of Labor
34 and Workforce Development provides the alleged violator with
35 notification of the violation and of the amount of the penalty by
36 certified mail and an opportunity to request a hearing before the
37 commissioner or his designee within 15 days following the receipt
38 of the notice. If a hearing is requested, the commissioner shall issue
39 a final order upon such hearing and a finding that a violation has
40 occurred. If no hearing is requested, the notice shall become a final
41 order upon expiration of the 15-day period. Payment of the penalty
42 is due when a final order is issued or when the notice becomes a
43 final order. Any penalty imposed pursuant to this section may be
44 recovered with costs in a summary proceeding commenced by the
45 commissioner pursuant to the "Penalty Enforcement Law of 1999,"
46 P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine
47 or penalty pursuant to this section shall be applied toward

1 enforcement and administration costs of the Division of Workplace
2 Standards in the Department of Labor and Workforce Development.

3 (c) When the Commissioner of Labor and Workforce
4 Development finds that the employer has violated provisions of
5 P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may
6 refer the matter to the Attorney General or his designee for
7 investigation and prosecution. Nothing in this subsection shall be
8 deemed to limit the authority of the Attorney General to investigate
9 and prosecute violations of the New Jersey Code of Criminal
10 Justice, nor to limit the commissioner's ability to refer any matter
11 for criminal investigation or prosecution.

12 (d) If the commissioner makes an initial determination that an
13 employer has violated the provisions of P.L.1963, c.150 (C.34:11-
14 56.25 et seq.) by paying wages at rates less than the rates applicable
15 under that act, whether or not the commissioner refers the matter to
16 the Attorney General or other appropriate prosecutorial authority
17 for investigation or prosecution pursuant to subsection (c) of this
18 section, the commissioner may immediately issue a stop-work order
19 to cease all business operations at every site where the violation
20 has occurred one or more worksites or across all of the employer's
21 worksites and places of business. The stop-work order may be
22 issued only against the employer found to be in violation or non-
23 compliance. If a stop-work order has been issued against a
24 subcontractor pursuant to this subsection, the general contractor
25 shall retain the right to terminate the subcontractor from the project.
26 The stop-work order shall remain in effect until the commissioner
27 issues an order releasing the stop-work order upon finding that the
28 employer has agreed to pay wages at the required rate and has paid
29 any wages due and any penalty deemed satisfactory to the
30 commissioner. Once the stop-work order is issued, any employee
31 affected by a stop-work order issued pursuant to this section shall
32 be entitled to pay from the employer for the first ten days of work
33 lost because of the stop-work order. Upon request of any employee
34 not paid wages, the commissioner can take assignment of the claim
35 and bring any legal action necessary to collect all that is due. As a
36 condition for release from a stop-work order, the commissioner may
37 require the employer to file with the department periodic reports for
38 a probationary period that shall not exceed two years that
39 demonstrate the employer's continued compliance with the
40 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). The
41 commissioner may assess a civil penalty of \$5,000 per day against
42 an employer for each day that it conducts business operations that
43 are in violation of the stop-work order. That penalty shall be
44 collected by the commissioner in a summary proceeding in
45 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
46 c.274 (C.2A:58-10 et seq.).
47 (cf: P.L.2019, c.158, s.1)

1 6. Section 8 of P.L.2019, c.212 (C.34:11-58.1) is amended to
2 read as follows:

3 8. a. If an employer fails to comply with a final determination
4 of the commissioner or a judgment of a court, including a small
5 claims court, made under the provisions of State wage and hour
6 laws or of section 10 of P.L.1999, c.90 (C.2C:40-2), to pay an
7 employee any wages owed or damages awarded within ten days of
8 the time that the determination or judgement requires the payment,
9 the commissioner may do either or both of the following:

10 (1) issue, in the manner provided in subsection b. of section 2 of
11 P.L.2009, c.194 (C.34:1A-1.12), a written determination directing
12 any appropriate agency to suspend one or more licenses held by the
13 employer or any successor firm of the employer until the employer
14 complies with the determination or judgement; or

15 (2) issue a **【stop work】** stop-work order against the violators
16 requiring the cessation of all business operations **【of the violator.**
17 **The stop work order may only be issued against the individual or**
18 **entity found to be in violation, and only as to the specific place of**
19 **business or employment for which the violation exists】** at one or
20 more worksites or across all of the employer's worksites and places
21 of business. The **【stop work】** stop-work order shall be effective
22 when served upon the violator or at a place of business or
23 employment by posting a copy of the **【stop work】** stop-work order
24 in a conspicuous location at the place of business or employment.
25 The **【stop work】** stop-work order shall remain in effect until the
26 commissioner issues an order releasing the **【stop work】** stop-work
27 order upon a finding that the violation has been corrected. As a
28 condition of release of a stop-work order under this section, the
29 commissioner may require the employer against whom the stop-
30 work order had been issued to file with the department periodic
31 reports for a probationary period of two years. The commissioner
32 may assess a civil penalty of \$5,000 per day against an employer for
33 each day that it conducts business operations that are in violation of
34 the stop-work order. That penalty shall be collected by the
35 commissioner in a summary proceeding in accordance with the
36 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
37 et seq.).

38 b. **【Stop work】** Stop-work orders and any penalties imposed
39 under a **【stop work】** stop-work order against a corporation,
40 partnership, limited liability corporation, or sole proprietorship shall
41 be effective against any successor entity that has one or more of the
42 same principals or officers as the corporation, partnership, or sole
43 proprietorship against which the **【stop work】** stop-work order was
44 issued and that is engaged in the same or equivalent trade or
45 activity.

1 c. Any employee affected by a **【stop work】** stop-work order
2 issued pursuant to this section shall be paid by the employer for the
3 first ten days of work lost because of the **【stop work】** stop-work
4 order.

5 d. A rebuttable presumption that an employer has established a
6 successor entity shall arise if the two share at least two of the
7 following capacities or characteristics:

- 8 (1) perform similar work within the same geographical area;
- 9 (2) occupy the same premises;
- 10 (3) have the same telephone or fax number;
- 11 (4) have the same email address or Internet website;
- 12 (5) employ substantially the same work force, administrative
13 employees, or both;
- 14 (6) utilize the same tools, facilities, or equipment;
- 15 (7) employ or engage the services of any person or persons
16 involved in the direction or control of the other; or
- 17 (8) list substantially the same work experience.

18 (cf: P.L.2019, c.212, s.8)

19

20 7. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 This bill provides the Commissioner of Labor and Workforce
26 Development, with respect to violations of State wage, benefit and
27 tax laws, additional enforcement options in the Office of
28 Administrative Law and in the courts, including subpoena powers
29 and injunctive relief. The bill permits the stop-work orders
30 currently permitted for violations of those laws to be applied to all
31 worksites of a violator, provides penalties of \$5,000 per day for a
32 failure to comply with a stop-work order, and entitles employees to
33 pay from their employers for the first ten days of a stop-work order.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 3920

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 16, 2021

The Senate Labor Committee reports favorably, with committee amendments, Senate Bill No. 3920.

This bill provides the Commissioner of Labor and Workforce Development, with respect to violations of State wage, benefit and tax laws, additional enforcement options in the Office of Administrative Law and in the courts, including subpoena powers and injunctive relief. The bill permits the stop-work orders currently permitted for violations of those laws to be applied to all worksites of a violator, provides penalties of \$5,000 per day for a failure to comply with a stop-work order, and entitles employees to pay from their employers for the first ten days of a stop-work order.

The committee adopted amendments which are technical in nature.

Governor Murphy Signs Legislation to Protect New Jersey Workers, Employers From Unlawful Misclassification

07/8/2021

TRENTON – Building on his commitment to making sure that workers and employers in New Jersey are treated fairly, Governor Phil Murphy today signed a four-bill legislative package furthering state efforts to stop employee misclassification.

Misclassification is the practice of illegally and improperly classifying employees as independent contractors. This practice deprives workers of the right to earn minimum wage and overtime, workers' compensation, unemployment, earned sick leave, job-protected family leave, temporary disability, and equal pay, and leaves them unprotected against discrimination. It also hurts the vast majority of employers who play by the rules, by putting them at a competitive disadvantage against those who flout the law.

Through today's action, a new Office of Strategic Enforcement and Compliance within the Department of Labor (DOL) will be created and DOL will create a database to track payroll projects, critical steps to tracking and eliminating misclassification. The others bills in the package will simplify the process for identifying misclassified workers and implement stop-work orders at worksites where misclassification is identified.

Tackling worker misclassification has been a priority of the Murphy Administration since day one, and these efforts build on the significant progress that already has been made. In 2018, a Department of Labor audit found more than 12,300 cases of workers being misclassified, resulting in more than \$460 million in underreported gross wages and \$14 million in lost state unemployment and temporary disability contributions. The audit covered just 1 percent of businesses, suggesting that the real cost of misclassification is much, much higher.

During his first year in office, Governor Murphy signed an executive order creating a Misclassification Task Force to determine the scope of the problem and propose measures to alleviate it. The Task Force was the result of a partnership between the Administration, the Legislature, and key labor and workforce stakeholders, that subsequently led to laws stiffening penalties and providing new enforcement tools to tackle misclassification. Today's bill signings continue this progress.

"Workers who are misclassified as independent contractors miss out on fair wages and benefits," **said Governor Phil Murphy**. "These business practices are unfair, abusive, and illegal and they cannot be tolerated. Today's action will give the state more tools to root-out and prevent misclassification. I am honored to sign these bills today on behalf of New Jersey's workers."

"We should all be proud that New Jersey is the best state in which to be a worker in the entire country. Because of the wages, rights and benefits New Jersey guarantees, we're also the state whose workforce delivers the biggest value to employers," **said Labor Commissioner Robert Asaro-Angelo**. "The action taken by the Governor here today will only bolster New Jersey's workforce -- the employees who deserve the protections put in place for them -- and the employers who play by the rules and properly classify their workers."

"Employee misclassification has been a growing issue in New Jersey and I'm pleased to see further legislation signed into law that combats this abhorrent practice," **said Senator Fred Madden**, chair of the

Senator Labor Committee and sponsor of A-5891. "It may sound like a simple bureaucratic problem, but it is far more onerous: misclassification results in hard-working New Jerseyans being denied basic benefits such as overtime, medical leave, unemployment insurance, and safe workplaces, and their unscrupulous employers benefit. I'm confident this package of bills will go far in eradicating this practice and ensuring that our workers are treated fairly."

"For too long, some contractors working for the state have been less than forthcoming about how they're paying their employees," **said Senator Troy Singleton**, sponsor of A-1171. "The creation of a centrally located, publicly available, database of payroll certifications will go far to ensuring that workers are being paid proper wages when working on public contracts. That is good for the workers and taxpayers alike, and I'm pleased to see the measure now signed into law."

"It is necessary to increase the Department of Labor's enforcement powers. We have seen far too many violations of State wage, benefit and tax laws," **said Assemblyman Anthony Verrelli**, sponsor of A-5890. "This law will further the department's responsibility to mitigate bad actors from misclassifying employees and lessen violations against laws previously enacted."

"Creating a centralized office for the coordination of workforce and labor-related efforts will help ensure greater enforcement and compliance with New Jersey wage, benefit and tax laws," **Assembly sponsors of A-5891 Joseph Egan and Robert Karabinchak said in a joint statement**. "This office will oversee the preliminary review of any business seeking State assistance to make sure they are complying with necessary regulations regarding employee compensation and contributions to unemployment and disability benefits funds. Ultimately, the coordination of these efforts will prove beneficial to our state, to employees, and to law-abiding businesses that deserve our assistance."

"Misclassifying workers as independent contractors just to get out of paying insurance premiums harms hard-working people who deserve the same benefits and protections as other company employees," **said Assemblywoman Shavonda Sumter**, sponsor of A-5892. "Not only will misclassification for the purpose of evading insurance premiums be a violation of our state's Insurance Fraud Prevention Act, but this law will also provide additional resources to help streamline the identification of employee misclassification."

Today, Governor Murphy took action on the following legislation:

A-5890/S-3920 (Verrelli/Madden, Greenstein) - Concerns enforcement of employee misclassification and stop-work order laws.

A-5891/S-3921 (Egan, Karabinchak, Space/Madden, Oroho) - Creates "Office of Strategic Enforcement and Compliance" in DOLWD; appropriates \$1 million from General Fund.

A-5892/S-3922 (Sumter/Madden, Lagana) - Streamlines identification of employee misclassification.

A-1171/S-1260 (Freiman, Karabinchak, Verrelli/Singleton, Oroho)- Requires Commissioner of Labor and Workforce Development to create Statewide database of certified payroll information for public works projects.

This Week in NJ: July 9th, 2021

07/9/2021



Governor Murphy Signs Bills to Advance New Jersey's Clean Energy Future

Governor Phil Murphy signed a package of bills aimed at advancing New Jersey's transition to a clean energy future to further the Administration's goal of reaching 100 percent clean energy by 2050. The legislation will increase solar development and facilitate installation of electric vehicle charging infrastructure throughout the state.

"Three and a half years ago we put forth one of the most aggressive plans in the nation to move New Jersey away from fossil fuels and towards a future based on clean and renewable energy technologies," **said Governor Murphy**. "From wind-turbine component manufacturing, to solar energy installation, to electric vehicles, the modernization of our energy sector will not only aid us in addressing climate change, but also drive significant economic growth and create good-paying, union jobs across the state. By signing these bills today, we are marking another milestone on our path to 100 percent clean energy by 2050 and fueling our clean innovation economy."

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Governor Murphy Signs Legislation to Protect New Jersey Workers, Employers From Unlawful Misclassification

Building on his commitment to making sure that workers and employers in New Jersey are treated fairly, Governor Murphy signed a four-bill legislative package furthering state efforts to stop employee misclassification.



“Workers who are misclassified as independent contractors miss out on fair wages and benefits,” **said Governor Murphy.** “These business practices are unfair, abusive, and illegal and they cannot be tolerated. Today’s action will give the state more tools to root-out and prevent misclassification. I am honored to sign these bills today on behalf of New Jersey’s workers.”

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NJBPU Launches Year 2 of Popular Charge Up New Jersey Electric Vehicle Rebate Program

The New Jersey Board of Public Utilities opened Year 2 of its Charge Up New Jersey electric vehicle (EV) incentive program taking one more step toward the Murphy Administration’s goal of getting 330,000 EVs on the road by 2025. Charge Up New Jersey provides a rebate of up to \$5,000 toward a new EV purchased or leased in New Jersey.

The incentive is available exclusively as a “point-of-sale” rebate applied during the purchase or leasing process at dealerships and requires a valid New Jersey driver’s license to get started. Only EVs registered and purchased in New Jersey are eligible.

“Transportation is responsible for over 40 percent of the state’s greenhouse gas emissions, as well as harmful air pollution, which often disproportionately impacts overburdened communities,” **said Joseph L. Fiordaliso, NJBPU President.** “Electrifying the transportation sector is a core strategy of Governor Murphy’s Energy Master Plan because it will help tackle climate change while improving public health and air quality. Making EVs more affordable will encourage EV adoption and get us closer to 100 percent clean energy by 2050.”

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Murphy Administration Enforces Strong Building Codes and Multi-Unit Housing Inspections Across the State

Governor Murphy and Lieutenant Governor Oliver reminded the public that the Division of Codes and Standards in the New Jersey Department of Community Affairs (DCA) is at the forefront of enforcing building codes, in partnership with municipalities in the state, to protect the health and safety of people who live, work, and visit New Jersey.



“The Florida condominium collapse is a sobering reminder that inspections and enforcement of building codes are critical tools that keep people safe,” **said Governor Murphy.** “New Jersey’s building codes are among the strongest in the nation, and our residents can rest assured that the Department of Community Affairs goes above and beyond the nationwide standard. Through continued vigilance, we can prevent tragedies and save lives.”

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