

S4230

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill) Yes

COMMITTEE STATEMENT:

ASSEMBLY: No

SENATE: Yes Labor
Budget &
Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes 1/3/2020
1/14/2020

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"'Gig' workers get protections under new laws," The Star-Ledger, January 21, 2020
[Le]"gislation gives 'gig' workers," The Times, January 21, 2020
"Murphy signs bills to crack down on worker," NJBIZ (New Brunswick, NJ) - January 20, 2020
"Murphy signs bills to protect N.J.'s self," South Jersey Times, January 21, 2020

Rwh/cl

P.L. 2019, CHAPTER 373, *approved January 20, 2020*
Assembly, No. 5839 (*First Reprint*)

1 **AN ACT** concerning penalties for violations of State wage, benefit
2 and tax laws in connection with the misclassification of
3 employees and supplementing Title 34 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. a. If the Commissioner of Labor and Workforce Development
9 finds that a violation of a State wage, benefit and tax law has occurred
10 and that the violation was in connection with failing to properly
11 classify employees, the commissioner is, in addition to imposing any
12 other remedies or penalties authorized by law, authorized to assess and
13 collect:

14 (1) an administrative “misclassification penalty” up to a maximum
15 of \$250 per misclassified employee for a first violation and up to a
16 maximum of \$1,000 per misclassified employee for each subsequent
17 violation; and

18 (2) a penalty to be provided for the misclassified worker of not
19 more than 5 percent of the worker’s gross earnings over the past
20 twelve months from the employer who failed to properly classify
21 them. The employer may be required to make these penalty payments
22 to the commissioner to be held in a special account in trust for the
23 worker or workers, or paid on order of the commissioner directly to
24 the workers or workers affected.

25 When determining the amount of the administrative
26 “misclassification penalty” imposed pursuant to paragraph (1) of this
27 subsection, the commissioner shall consider factors which include the
28 history of previous violations by the employer, the seriousness of the
29 violation, the good faith of the employer and the size of the employer’s
30 business. No administrative “misclassification penalty” shall be levied
31 pursuant to this section unless the commissioner provides the alleged
32 violator with notification of the violation and of the amount of penalty,
33 and provides the alleged violator an opportunity to request a hearing
34 before the commissioner or his or her designee.

35 b. For violations of any State wage, benefit or tax law, other than
36 the State unemployment and disability benefits laws, which occur in
37 connection with the misclassification of one or more employees, the
38 alleged violator may request a hearing within 15 days following
39 receipt of the notice. If a hearing is requested, the commissioner shall
40 issue a final order upon such hearing and a finding that the violation
41 has occurred. If no hearing is requested, the notice shall become a

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 December 12, 2019.

1 final order upon expiration of the 15-day period. For violations
2 subject to this subsection b., payment of the administrative
3 “misclassification penalty” shall be due when the final order is issued
4 or when the notice becomes the final order.

5 c. For violations of the State unemployment and disability
6 benefits laws in connection with the misclassification of one or more
7 employees, the alleged violator may request a hearing in the manner
8 and within the time prescribed by those laws, and payment of the
9 administrative “misclassification penalty” shall be due when
10 assessment for contributions, penalties and interest are due pursuant to
11 subsection (d) of R.S.43:21-14 or section 31 of P.L.1948, c.110
12 (C.43:21-55).

13 d. Any penalty imposed pursuant to this section may be recovered
14 with costs in a summary proceeding commenced by the Commissioner
15 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274
16 (C.2A:58-10 et seq.).

17 e. Any sum collected as an administrative “misclassification
18 penalty” pursuant to paragraph (1) of ¹~~【this】~~¹ subsection ¹a.¹ shall be
19 applied toward enforcement and administration costs of the division
20 within the Department of Labor and Workforce Development
21 responsible for enforcement of the law violated by the employer.
22 Nothing in this section shall prevent the commissioner from assessing
23 interest, penalties, or other fees allowable by law.

24 f. For purposes of this section, “State wage, benefit and tax laws”
25 means “State wage, benefit and tax laws” as defined in section 1 of
26 P.L.2009, c.194 (C.34:1A-1.11), and “State unemployment and
27 disability benefits laws” mean the "unemployment compensation law,"
28 R.S.43:21-1 et seq., and the "Temporary Disability Benefits Law,"
29 P.L.1948, c.110 (C.43:21-25 et al.).

30

31 2. This act shall take effect immediately.

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33

34

35

36 _____
Concerns penalties for misclassification of employees.

ASSEMBLY, No. 5839

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED NOVEMBER 14, 2019

Sponsored by:

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Assemblywoman Downey and Assemblyman Houghtaling

SYNOPSIS

Concerns penalties for misclassification of employees.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/10/2019)

A5839 MORIARTY, VERRELLI

2

1 AN ACT concerning penalties for violations of State wage, benefit
2 and tax laws in connection with the misclassification of
3 employees and supplementing Title 34 of the Revised Statutes.

4

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

7

8 1. a. If the Commissioner of Labor and Workforce
9 Development finds that a violation of a State wage, benefit and tax
10 law has occurred and that the violation was in connection with
11 failing to properly classify employees, the commissioner is, in
12 addition to imposing any other remedies or penalties authorized by
13 law, authorized to assess and collect:

14 (1) an administrative “misclassification penalty” up to a
15 maximum of \$250 per misclassified employee for a first violation
16 and up to a maximum of \$1,000 per misclassified employee for
17 each subsequent violation; and

18 (2) a penalty to be provided for the misclassified worker of not
19 more than 5 percent of the worker’s gross earnings over the past
20 twelve months from the employer who failed to properly classify
21 them. The employer may be required to make these penalty
22 payments to the commissioner to be held in a special account in
23 trust for the worker or workers, or paid on order of the
24 commissioner directly to the workers or workers affected.

25 When determining the amount of the administrative
26 “misclassification penalty” imposed pursuant to paragraph (1) of
27 this subsection, the commissioner shall consider factors which
28 include the history of previous violations by the employer, the
29 seriousness of the violation, the good faith of the employer and the
30 size of the employer’s business. No administrative
31 “misclassification penalty” shall be levied pursuant to this section
32 unless the commissioner provides the alleged violator with
33 notification of the violation and of the amount of penalty, and
34 provides the alleged violator an opportunity to request a hearing
35 before the commissioner or his or her designee.

36 b. For violations of any State wage, benefit or tax law, other
37 than the State unemployment and disability benefits laws, which
38 occur in connection with the misclassification of one or more
39 employees, the alleged violator may request a hearing within 15
40 days following receipt of the notice. If a hearing is requested, the
41 commissioner shall issue a final order upon such hearing and a
42 finding that the violation has occurred. If no hearing is requested,
43 the notice shall become a final order upon expiration of the 15-day
44 period. For violations subject to this subsection b., payment of the
45 administrative “misclassification penalty” shall be due when the
46 final order is issued or when the notice becomes the final order.

47 c. For violations of the State unemployment and disability
48 benefits laws in connection with the misclassification of one or

1 more employees, the alleged violator may request a hearing in the
2 manner and within the time prescribed by those laws, and payment
3 of the administrative "misclassification penalty" shall be due when
4 assessment for contributions, penalties and interest are due pursuant
5 to subsection (d) of R.S.43:21-14 or section 31 of P.L.1948, c.110
6 (C.43:21-55).

7 d. Any penalty imposed pursuant to this section may be
8 recovered with costs in a summary proceeding commenced by the
9 Commissioner pursuant to the "Penalty Enforcement Law of 1999,"
10 P.L.1999, c.274 (C.2A:58-10 et seq.).

11 e. Any sum collected as an administrative "misclassification
12 penalty" pursuant to paragraph (1) of this subsection shall be
13 applied toward enforcement and administration costs of the division
14 within the Department of Labor and Workforce Development
15 responsible for enforcement of the law violated by the employer.
16 Nothing in this section shall prevent the commissioner from
17 assessing interest, penalties, or other fees allowable by law.

18 f. For purposes of this section, "State wage, benefit and tax
19 laws" means "State wage, benefit and tax laws" as defined in
20 section 1 of P.L.2009, c.194 (C.34:1A-1.11), and "State
21 unemployment and disability benefits laws" mean the
22 "unemployment compensation law," R.S.43:21-1 et seq., and the
23 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
24 et al.).

25

26 2. This act shall take effect immediately.

27

28

STATEMENT

29

30 This bill provides for the assessment of penalties for violations
31 of State wage, benefit and tax laws in connection with the
32 misclassification of employees.

33 The bill authorizes the Commissioner of Labor and Workforce
34 Development, in the case of a violation of a State wage, benefit and
35 tax law in connection with failing to properly classify employees, to
36 impose the following penalties in addition to any other remedies or
37 penalties authorized by law: authorized to assess and collect:

38 1. An administrative "misclassification penalty" up to a
39 maximum of \$250 per misclassified employee for a first violation
40 and up to a maximum of \$1,000 per misclassified employee for
41 each subsequent violation; and

42 2. A penalty to be provided for the misclassified worker of not
43 more than 5 percent of the worker's gross earnings over the past
44 twelve months from the employer who failed to properly classify
45 them. The employer may be required to make these penalty
46 payments to the commissioner to be held in a special account in
47 trust for the worker, or paid on order of the commissioner directly
48 to the worker.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5839

STATE OF NEW JERSEY

DATED: NOVEMBER 18, 2019

The Assembly Labor Committee reports favorably Assembly Bill No. 5839.

This bill provides for the assessment of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees.

The bill authorizes the Commissioner of Labor and Workforce Development, in the case of a violation of a State wage, benefit and tax law in connection with failing to properly classify employees, to impose the following penalties in addition to any other remedies or penalties authorized by law. The commissioner is authorized to assess and collect:

1. An administrative “misclassification penalty” up to a maximum of \$250 per misclassified employee for a first violation and up to a maximum of \$1,000 per misclassified employee for each subsequent violation; and
2. A penalty to be provided for the misclassified worker of not more than five percent of the worker’s gross earnings over the past 12 months from the employer who failed to properly classify them. The employer may be required to make these penalty payments to the commissioner to be held in a special account in trust for the worker, or paid on order of the commissioner directly to the worker.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5839

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2019

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5839.

This bill provides for the assessment of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees.

The bill authorizes the Commissioner of Labor and Workforce Development, in the case of a violation of a State wage, benefit and tax law in connection with failing to properly classify employees, to impose the following penalties in addition to any other remedies or penalties authorized by law. The commissioner is authorized to assess and collect:

1. An administrative “misclassification penalty” up to a maximum of \$250 per misclassified employee for a first violation and up to a maximum of \$1,000 per misclassified employee for each subsequent violation; and

2. A penalty to be provided for the misclassified worker of not more than five percent of the worker’s gross earnings over the past 12 months from the employer who failed to properly classify them. The employer may be required to make these penalty payments to the commissioner to be held in a special account in trust for the worker, or paid on order of the commissioner directly to the worker.

COMMITTEE AMENDMENTS:

The committee amended the bill to correct an internal citation.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill may result in an increase in revenues from the collection of penalties for violations of State wage, benefit, and tax laws in connection with the misclassification of employees.

The OLS notes that, if enacted, the bill may result in an increase, likely insignificant, in administrative State expenditures associated with the enforcement of the bill’s provisions. Under the bill, any revenue collected must be used to offset any administrative expenditures.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 5839

STATE OF NEW JERSEY

DATED: JANUARY 6, 2020

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 5839 (1R).

This bill provides for the assessment of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees.

The bill authorizes the Commissioner of Labor and Workforce Development, in the case of a violation of a State wage, benefit and tax law in connection with failing to properly classify employees, to impose the following penalties in addition to any other remedies or penalties authorized by law. The commissioner is authorized to assess and collect:

1. An administrative “misclassification penalty” up to a maximum of \$250 per misclassified employee for a first violation and up to a maximum of \$1,000 per misclassified employee for each subsequent violation; and

2. A penalty to be provided for the misclassified worker of not more than five percent of the worker’s gross earnings over the past 12 months from the employer who failed to properly classify them. The employer may be required to make these penalty payments to the commissioner to be held in a special account in trust for the worker, or paid on order of the commissioner directly to the worker.

As reported, this bill is identical to Senate Bill No. 4230, as amended and reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill may result in an increase in revenues from the collection of penalties for violations of State wage, benefit, and tax laws in connection with the misclassification of employees.

The OLS notes that, if enacted, the bill may result in an increase, likely insignificant, in administrative State expenditures associated with the enforcement of the bill’s provisions. Under the bill, any revenue collected must be used to offset any administrative expenditures.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 5839
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: DECEMBER 16, 2019

SUMMARY

Synopsis: Concerns penalties for misclassification of employees.

Type of Impact: Increase in annual State revenue, partially, if not fully, offset by an increase in annual State expenditures.

Agencies Affected: Department of Labor and Workforce Development.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost Increase		Indeterminate	
State Revenue Increase		Indeterminate	

- The Office of Legislative Services (OLS) estimates that the bill may result in an increase in revenues from the collection of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees.
- The OLS notes that, if enacted, the bill may result in an increase, likely insignificant, in administrative State expenditures associated with the enforcement of the bill’s provisions. Under the bill, any revenue collected must be used to offset any administrative expenditures.

BILL DESCRIPTION

This bill provides for the assessment of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees.

The bill authorizes the Commissioner of Labor and Workforce Development, in the case of a violation of a State wage, benefit and tax law in connection with failing to properly classify employees, to impose the following penalties in addition to any other remedies or penalties authorized by law. The commissioner is authorized to assess and collect:

1. An administrative “misclassification penalty” up to a maximum of \$250 per misclassified employee for a first violation and up to a maximum of \$1,000 per misclassified employee for each subsequent violation; and

2. A penalty to be provided for the misclassified worker of not more than five percent of the worker's gross earnings over the past 12 months from the employer who failed to properly classify them. The employer may be required to make these penalty payments to the commissioner to be held in a special account in trust for the worker, or paid on order of the commissioner directly to the worker.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill may result in an increase in revenues from the collection of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees. The OLS does not have information on the number of violations to State wage, benefits and tax laws concerning misclassification.

The OLS notes that, if enacted, the bill may result in an increase, likely insignificant, in administrative State expenditures associated with the enforcement of the bill's provisions. Under the bill, any revenue collected must be used to offset any administrative expenditures.

Section: Commerce, Labor and Industry
Analyst: Juan C. Rodriguez
Associate Fiscal Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 5839

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: DECEMBER 19, 2019

SUMMARY

- Synopsis:** Concerns penalties for misclassification of employees.
- Type of Impact:** Increase in annual State revenue, partially, if not fully, offset by an increase in annual State expenditures.
- Agencies Affected:** Department of Labor and Workforce Development.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost Increase		Indeterminate	
State Revenue Increase		Indeterminate	

- The Office of Legislative Services (OLS) estimates that the bill may result in an increase in revenues from the collection of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees.
- The OLS notes that, if enacted, the bill may result in an increase, likely insignificant, in administrative State expenditures associated with the enforcement of the bill's provisions. Under the bill, any revenue collected must be used to offset any administrative expenditures.

BILL DESCRIPTION

This bill provides for the assessment of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees.

The bill authorizes the Commissioner of Labor and Workforce Development, in the case of a violation of a State wage, benefit and tax law in connection with failing to properly classify employees, to impose the following penalties in addition to any other remedies or penalties authorized by law. The commissioner is authorized to assess and collect:

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FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill may result in an increase in revenues from the collection of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees. The OLS does not have information on the number of violations to State wage, benefits and tax laws concerning misclassification.

The OLS notes that, if enacted, the bill may result in an increase, likely insignificant, in administrative State expenditures associated with the enforcement of the bill’s provisions. Under the bill, any revenue collected must be used to offset any administrative expenditures.

Section: Commerce, Labor and Industry
Analyst: Juan C. Rodriguez
Senior Fiscal Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 4230

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED NOVEMBER 14, 2019

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Concerns penalties for misclassification of employees.

CURRENT VERSION OF TEXT

As introduced.



S4230 MADDEN

2

1 AN ACT concerning penalties for violations of State wage, benefit
2 and tax laws in connection with the misclassification of
3 employees and supplementing Title 34 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. a. If the Commissioner of Labor and Workforce
9 Development finds that a violation of a State wage, benefit and tax
10 law has occurred and that the violation was in connection with
11 failing to properly classify employees, the commissioner is, in
12 addition to imposing any other remedies or penalties authorized by
13 law, authorized to assess and collect:

14 (1) an administrative “misclassification penalty” up to a
15 maximum of \$250 per misclassified employee for a first violation
16 and up to a maximum of \$1,000 per misclassified employee for
17 each subsequent violation; and

18 (2) a penalty to be provided for the misclassified worker of not
19 more than 5 percent of the worker’s gross earnings over the past
20 twelve months from the employer who failed to properly classify
21 them. The employer may be required to make these penalty
22 payments to the commissioner to be held in a special account in
23 trust for the worker or workers, or paid on order of the
24 commissioner directly to the workers or workers affected.

25 When determining the amount of the administrative
26 “misclassification penalty” imposed pursuant to paragraph (1) of
27 this subsection, the commissioner shall consider factors which
28 include the history of previous violations by the employer, the
29 seriousness of the violation, the good faith of the employer and the
30 size of the employer’s business. No administrative
31 “misclassification penalty” shall be levied pursuant to this section
32 unless the commissioner provides the alleged violator with
33 notification of the violation and of the amount of penalty, and
34 provides the alleged violator an opportunity to request a hearing
35 before the commissioner or his or her designee.

36 b. For violations of any State wage, benefit or tax law, other
37 than the State unemployment and disability benefits laws, which
38 occur in connection with the misclassification of one or more
39 employees, the alleged violator may request a hearing within 15
40 days following receipt of the notice. If a hearing is requested, the
41 commissioner shall issue a final order upon such hearing and a
42 finding that the violation has occurred. If no hearing is requested,
43 the notice shall become a final order upon expiration of the 15-day
44 period. For violations subject to this subsection b., payment of the
45 administrative “misclassification penalty” shall be due when the
46 final order is issued or when the notice becomes the final order.

47 c. For violations of the State unemployment and disability
48 benefits laws in connection with the misclassification of one or
49 more employees, the alleged violator may request a hearing in the

S4230 MADDEN

1 manner and within the time prescribed by those laws, and payment
2 of the administrative "misclassification penalty" shall be due when
3 assessment for contributions, penalties and interest are due pursuant
4 to subsection (d) of R.S.43:21-14 or section 31 of P.L.1948, c.110
5 (C.43:21-55).

6 d. Any penalty imposed pursuant to this section may be
7 recovered with costs in a summary proceeding commenced by the
8 Commissioner pursuant to the "Penalty Enforcement Law of 1999,"
9 P.L.1999, c.274 (C.2A:58-10 et seq.).

10 e. Any sum collected as an administrative "misclassification
11 penalty" pursuant to paragraph (1) of this subsection shall be
12 applied toward enforcement and administration costs of the division
13 within the Department of Labor and Workforce Development
14 responsible for enforcement of the law violated by the employer.
15 Nothing in this section shall prevent the commissioner from
16 assessing interest, penalties, or other fees allowable by law.

17 f. For purposes of this section, "State wage, benefit and tax
18 laws" means "State wage, benefit and tax laws" as defined in
19 section 1 of P.L.2009, c.194 (C.34:1A-1.11), and "State
20 unemployment and disability benefits laws" mean the
21 "unemployment compensation law," R.S.43:21-1 et seq., and the
22 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
23 et al.).

24
25 2. This act shall take effect immediately.
26
27

28 STATEMENT
29

30 This bill provides for the assessment of penalties for violations
31 of State wage, benefit and tax laws in connection with the
32 misclassification of employees.

33 The bill authorizes the Commissioner of Labor and Workforce
34 Development, in the case of a violation of a State wage, benefit and
35 tax law in connection with failing to properly classify employees, to
36 impose the following penalties in addition to any other remedies or
37 penalties authorized by law: authorized to assess and collect:

38 1. An administrative "misclassification penalty" up to a
39 maximum of \$250 per misclassified employee for a first violation
40 and up to a maximum of \$1,000 per misclassified employee for
41 each subsequent violation; and

42 2. A penalty to be provided for the misclassified worker of not
43 more than 5 percent of the worker's gross earnings over the past
44 twelve months from the employer who failed to properly classify
45 them. The employer may be required to make these penalty
46 payments to the commissioner to be held in a special account in
47 trust for the worker, or paid on order of the commissioner directly
48 to the worker.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 4230

STATE OF NEW JERSEY

DATED: DECEMBER 5, 2019

The Senate Labor Committee reports favorably, Senate Bill No. 4230.

This bill provides for the assessment of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees.

The bill authorizes the Commissioner of Labor and Workforce Development, in the case of a violation of a State wage, benefit and tax law in connection with failing to properly classify employees, to impose the following penalties in addition to any other remedies or penalties authorized by law: authorized to assess and collect:

1. An administrative “misclassification penalty” up to a maximum of \$250 per misclassified employee for a first violation and up to a maximum of \$1,000 per misclassified employee for each subsequent violation; and
2. A penalty to be provided for the misclassified worker of not more than 5 percent of the worker’s gross earnings over the past twelve months from the employer who failed to properly classify them. The employer may be required to make these penalty payments to the commissioner to be held in a special account in trust for the worker, or paid on order of the commissioner directly to the worker.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 4230

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 6, 2019

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 4230, with committee amendments.

As amended, this bill provides for the assessment of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees.

The bill authorizes the Commissioner of Labor and Workforce Development, in the case of a violation of a State wage, benefit and tax law in connection with failing to properly classify employees, to impose the following penalties in addition to any other remedies or penalties authorized by law. The commissioner is authorized to assess and collect:

1. An administrative “misclassification penalty” up to a maximum of \$250 per misclassified employee for a first violation and up to a maximum of \$1,000 per misclassified employee for each subsequent violation; and

2. A penalty to be provided for the misclassified worker of not more than five percent of the worker’s gross earnings over the past 12 months from the employer who failed to properly classify them. The employer may be required to make these penalty payments to the commissioner to be held in a special account in trust for the worker, or paid on order of the commissioner directly to the worker.

As amended and reported, this bill is identical to Assembly Bill No. 5839 (1R), as also reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments correct an internal citation.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill may result in an increase in revenues from the collection of penalties for violations of State wage, benefit, and tax laws in connection with the misclassification of employees.

The OLS notes that, if enacted, the bill may result in an increase, likely insignificant, in administrative State expenditures associated with the enforcement of the bill’s provisions. Under the bill, any revenue collected must be used to offset any administrative expenditures.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 4230
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: JANUARY 3, 2020

SUMMARY

Synopsis: Concerns penalties for misclassification of employees.

Type of Impact: Increase in annual State revenue, partially, if not fully, offset by an increase in annual State expenditures.

Agencies Affected: Department of Labor and Workforce Development.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost Increase		Indeterminate	
State Revenue Increase		Indeterminate	

- The Office of Legislative Services (OLS) estimates that the bill may result in an increase in revenues from the collection of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees.
- The OLS notes that, if enacted, the bill may result in an increase, likely insignificant, in administrative State expenditures associated with the enforcement of the bill’s provisions. Under the bill, any revenue collected must be used to offset any administrative expenditures.

BILL DESCRIPTION

This bill provides for the assessment of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees.

The bill authorizes the Commissioner of Labor and Workforce Development, in the case of a violation of a State wage, benefit and tax law in connection with failing to properly classify employees, to impose the following penalties in addition to any other remedies or penalties authorized by law. The commissioner is authorized to assess and collect:

1. An administrative “misclassification penalty” up to a maximum of \$250 per misclassified employee for a first violation and up to a maximum of \$1,000 per misclassified employee for each subsequent violation; and

2. A penalty to be provided for the misclassified worker of not more than five percent of the worker's gross earnings over the past 12 months from the employer who failed to properly classify them. The employer may be required to make these penalty payments to the commissioner to be held in a special account in trust for the worker, or paid on order of the commissioner directly to the worker.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill may result in an increase in revenues from the collection of penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees. The OLS does not have information on the number of violations to State wage, benefits and tax laws concerning misclassification.

The OLS notes that, if enacted, the bill may result in an increase, likely insignificant, in administrative State expenditures associated with the enforcement of the bill's provisions. Under the bill, any revenue collected must be used to offset any administrative expenditures.

Section: Commerce, Labor and Industry
Analyst: Juan C. Rodriguez
Senior Fiscal Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 4230 STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JANUARY 14, 2020

SUMMARY

- Synopsis:** Concerns penalties for misclassification of employees.
- Type of Impact:** Increase in annual State revenue, partially, if not fully, offset by an increase in annual State expenditures.
- Agencies Affected:** Department of Labor and Workforce Development.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost Increase		Indeterminate	
State Revenue Increase		Indeterminate	

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FISCAL ANALYSIS

EXECUTIVE BRANCH

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Governor Murphy Signs Sweeping Legislative Package to Combat Worker Misclassification and Exploitation

01/20/2020

TRENTON – Acting on his commitment to support and uplift New Jersey workers, Governor Phil Murphy today signed a legislative package combatting worker misclassification and exploitation. The bills will crack down on employee misclassification in businesses by allowing stop-work orders against employers violating state wage, benefit, and tax law; providing assessment of penalties for violations in connection with misclassification of employees; and requiring employers to post a notice for their employees regarding employee misclassification, among others.

Since day one, taking on the practice of misclassification has been a top priority for the Murphy Administration. In May 2018, Governor Murphy signed Executive Order No. 25, which established the Task Force on Employee Misclassification. He later released a comprehensive report from the Task Force which included sixteen recommendations for both executive actions and relevant legislation. His administration has already made significant progress on responding to the Task Force's recommendations to curtail the widespread and illegal practice of misclassifying workers, including through improving cross-training between departments and cooperation with neighboring states.

"We cannot build a stronger and fairer economy without strong workplace protections that ensure fairness for employees," **said Governor Murphy**. "I am proud to sign these bills today to curb this unethical and illegal practice that hurts our working families and exploits New Jersey's workers."

"Gov. Murphy has positioned New Jersey to be a leader in the fight against illegal misclassification by giving the Labor Department powerful new compliance and enforcement tools," **said Labor Commissioner Robert Asaro-Angelo**. "These bills protect employees who are misclassified as independent contractors as well as independent contractors improperly treated as employees, and provide critical support for employers who play by the rules. These bills contain important work rights and protections for both our state's employees and their employers. Thank you to the dedicated leadership of my colleagues on the Misclassification Task Force, which formulated the recommendations for this package of legislation."

The Governor signed the following bills into law:

A5838 (DeAngelo, Danielsen, Houghtaling/Madden, Singleton) - Concerns stop-work orders.

A5839 (Moriarty, Verrelli, DeAngelo/Madden, Singleton) - Concerns penalties for misclassification of employees.

A5840 (Carter, Moriarty/Greenstein, Madden)- Concerns joint liability for payment of employer tax law.

A5843 (Speight, Verrelli, Moriarty/Lagana, Greenstein) - Requires employers to post notice for employees on employee misclassification.

S4226 (Madden, Singleton/Calabrese, Verrelli, Moriarty) - Permits Department of Labor and Workforce Development to post information of person who violates State wage, benefit and tax laws.

S4228 (Lagana, Madden/Chiaravalloti, Moriarty) - Concerns tax data sharing between State Treasury and DOLWD.

"Workers' rights enhance the quality of life of all New Jersey residents. They are vital to the livelihoods for those employed in our state and for the families they support," **said Senator Joseph Lagana**. "These rights often come under attack, but in New Jersey we are committed to standing up for employees and their families. With this bill package in place, we honor that commitment and make our state a greater place to earn a living."

"When the rights of our workers are threatened, we need to take action to ensure that they are protected," **said Senator Troy Singleton**. "We can protect our workers' rights by punishing those unscrupulous contractors and companies who commit wage theft and ultimately take advantage of their hard work."

"Today marks a victory for workers all across the state of New Jersey," **said Senator Fred Madden**. "For far too long, unscrupulous contractors have cheated their workers out of hard-earned wages and benefits in order to undercut the competition and increase personal profits. This has created untold social and economic costs for our middle class families, but today we say no more. These increased protections underscore our commitment to fighting for the rights of our working class."

"When employers misclassify their employees as independent contractors, the impact is not only felt in the homes of hardworking families throughout the state but in our entire state's economy," **said Senator Linda Greenstein**. "Contractors need to understand the severity of their actions; this is not simply the theft of wages, it is the theft of financial security, opportunities and health benefits. I am proud of New Jersey for taking a stand for its workers and for sending a message that these selfish and criminal actions will be met with consequences."

Assemblymembers Wayne DeAngelo, Joe Danielsen, Eric Houghtaling, Paul Moriarty, Shanique Speight, Anthony Verrelli, Linda Carter, Clinton Calabrese, and Nicholas Chiaravalloti issued the following joint statement on the new laws regarding misclassification concerns:

"Classifying workers as independent contractors as an alternative to full or part-time employment has been a grossly misused practice of misclassification.

"It hurts employees and their families who do not have access to critical benefits and protections they are entitled to by law, including minimum wage, overtime compensation, family and medical leave and unemployment insurance. It also hurts each of the taxpayers and businesses paying their fair share while others avoid their tax duties.

"These new mandates will work in concert to stem the practice of misclassification together with expanding stop work orders beyond those for construction trades and prevailing wage, and requiring tax data to be shared between the state Department of Treasury and Labor to support more comprehensive investigations."

"The cost of misclassification is hundreds of millions of dollars. When an employee is wrongfully tagged an independent contractor - when they are actually an employee - they are not paid workers' compensation, social security and overtime," **said William Mullen, President of the New Jersey Building and Construction Trades Council**. "Not only is the worker being exploited, but the State is not getting its fair share of payroll taxes. In addition, worker misclassification creates an unfair playing field for the contractors that are actually doing the right thing. I commended Governor Murphy for signing into law such an important package of bills to protect working men and women of New Jersey."

"Under Governor Murphy's leadership, New Jersey has aggressively taken action to protect workers who've been cheated out of hard-earned pay and benefits," **said Charles Wowkanech, President of the New Jersey State AFL-CIO**. "I applaud the Governor for his unwavering commitment to our workers and for always standing with working families in the Garden State."