

[First Reprint]

ASSEMBLY, No. 5890

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 9, 2021

Sponsored by:

Assemblyman ANTHONY S. VERRELLI
District 15 (Hunterdon and Mercer)

Co-Sponsored by:

Assemblywoman Murphy

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 16, 2021, with amendments.



(Sponsorship Updated As Of: 6/16/2021)

A5890 [1R] 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted June 16, 2021.

- 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:

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

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

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

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

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

22 (2) An employer who is subject to a stop-work order shall, within
23 72 hours of its receipt of the notification, have the right to appeal to
24 the commissioner in writing for an opportunity to be heard and contest
25 the stop-work order.

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

41 If the employer does not request an appeal to the commissioner in
42 writing, the stop-work order shall become a final order after the
43 expiration of the 72-hour period. The authority to assess a civil penalty
44 under paragraph (1) of this subsection shall be in addition to any
45 misclassification penalty assessed under section 1 of P.L.2019, C.373
46 (C.34:1A-1.18) and all other enforcement provisions or assessments
47 issued for the employer's violation of any State wage, benefit and tax
48 law, including but not limited to a violation of R.S.34:15-79, or a

1 failure to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or
2 for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et
3 seq.) or P.L.1989, c.293 (C.34:15C-1 et al.) The commissioner may
4 '[set] compromise' any civil penalty assessed under this section in an
5 amount the commissioner determines to be appropriate.

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

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

20 d. For purposes of this section:

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

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

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

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

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

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

44

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

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

31 In addition to the foregoing fines, and in addition to or as an
32 alternative to any criminal proceedings, if an entity fails to comply
33 with any lawfully issued subpoena, or upon the refusal of any
34 witness to testify to any matter regarding which the witness may be
35 lawfully interrogated, the commissioner or the commissioner's
36 designee may apply to the Superior Court to compel obedience by
37 proceedings for contempt, in the same manner as in a failure to
38 comply with the requirements of a subpoena issued from the court
39 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
42 investigation pursuant to subsection a. of this section, that an
43 employer is in violation of any **【wage and hour law or】** State wage,
44 benefit and tax law, as defined in section 1 of P.L.2009, c.194
45 (C.34:1A-1.11), including but not limited to a violation of
46 R.S.34:15-79, or has failed to meet obligations as provided in
47 R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of

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

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

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

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

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

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

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

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

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

30

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

33 11. (a) Any employer who willfully hinders or delays the
34 commissioner in the performance of his duties in the enforcement of
35 this act, or fails to make, keep, and preserve any records as required
36 under the provisions of this act, or falsifies any such record, or
37 refuses to make any such record accessible to the commissioner
38 upon demand, or fails to timely respond to or furnish records
39 required by a subpoena issued by the commissioner, or refuses to
40 furnish a sworn statement of such record or any other information
41 required for the proper enforcement of this act to the commissioner
42 upon demand, or pays or agrees to pay wages at a rate less than the
43 rate applicable under this act or otherwise violates any provision of
44 this act or of any regulation or order issued under this act shall be
45 guilty of a disorderly persons offense and shall, upon conviction
46 therefor, be fined not less than \$100.00 nor more than \$1,000 or be
47 imprisoned for not less than 10 nor more than 90 days, or by both

1 such fine and imprisonment. Each week, in any day of which a
2 worker is paid less than the rate applicable to him under this act and
3 each worker so paid, shall constitute a separate offense. In addition
4 to the foregoing fines, and in addition to or as an alternative to any
5 criminal proceedings, if an employer fails to comply with any
6 lawfully issued subpoena, or on the refusal of any witness to testify
7 to any matter regarding which the witness may be lawfully
8 interrogated, the commissioner may apply to the Superior Court to
9 compel obedience by proceedings for contempt, in the same manner
10 as in failure to comply with the requirements of a subpoena issued
11 from the court or a refusal to testify in the court.

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

44 (c) When the Commissioner of Labor and Workforce
45 Development finds that the employer has violated provisions of
46 P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may
47 refer the matter to the Attorney General or his designee for
48 investigation and prosecution. Nothing in this subsection shall be

1 deemed to limit the authority of the Attorney General to investigate
2 and prosecute violations of the New Jersey Code of Criminal
3 Justice, nor to limit the commissioner's ability to refer any matter
4 for criminal investigation or prosecution.

5 (d) If the commissioner makes an initial determination that an
6 employer has violated the provisions of P.L.1963, c.150 (C.34:11-
7 56.25 et seq.) by paying wages at rates less than the rates applicable
8 under that act, whether or not the commissioner refers the matter to
9 the Attorney General or other appropriate prosecutorial authority
10 for investigation or prosecution pursuant to subsection (c) of this
11 section, the commissioner may immediately issue a stop-work order
12 to cease all business operations at **every site where the violation**
13 **has occurred** one or more worksites or across all of the employer's
14 worksites and places of business. The stop-work order may be
15 issued only against the employer found to be in violation or non-
16 compliance. If a stop-work order has been issued against a
17 subcontractor pursuant to this subsection, the general contractor
18 shall retain the right to terminate the subcontractor from the project.
19 The stop-work order shall remain in effect until the commissioner
20 issues an order releasing the stop-work order upon finding that the
21 employer has agreed to pay wages at the required rate and has paid
22 any wages due and any penalty deemed satisfactory to the
23 commissioner. Once the stop-work order is issued, any employee
24 affected by a stop-work order issued pursuant to this section shall
25 be entitled to pay from the employer for the first ten days of work
26 lost because of the stop-work order. Upon request of any employee
27 not paid wages, the commissioner can take assignment of the claim
28 and bring any legal action necessary to collect all that is due. As a
29 condition for release from a stop-work order, the commissioner may
30 require the employer to file with the department periodic reports for
31 a probationary period that shall not exceed two years that
32 demonstrate the employer's continued compliance with the
33 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). The
34 commissioner may assess a civil penalty of \$5,000 per day against
35 an employer for each day that it conducts business operations that
36 are in violation of the stop-work order. That penalty shall be
37 collected by the commissioner in a summary proceeding in
38 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
39 c.274 (C.2A:58-10 et seq.).
40 (cf: P.L.2019, c.158, s.1)

41

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

44 8. a. If an employer fails to comply with a final determination
45 of the commissioner or a judgment of a court, including a small
46 claims court, made under the provisions of State wage and hour
47 laws or of section 10 of P.L.1999, c.90 (C.2C:40-2), to pay an

1 employee any wages owed or damages awarded within ten days of
2 the time that the determination or judgement requires the payment,
3 the commissioner may do either or both of the following:

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

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

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

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

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

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

- 1 (2) occupy the same premises;
- 2 (3) have the same telephone or fax number;
- 3 (4) have the same email address or Internet website;
- 4 (5) employ substantially the same work force, administrative
- 5 employees, or both;
- 6 (6) utilize the same tools, facilities, or equipment;
- 7 (7) employ or engage the services of any person or persons
- 8 involved in the direction or control of the other; or
- 9 (8) list substantially the same work experience.
- 10 (cf: P.L.2019, c.212, s.8)
- 11
- 12 7. This act shall take effect immediately.