

ASSEMBLY, No. 3581

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED DECEMBER 6, 2012

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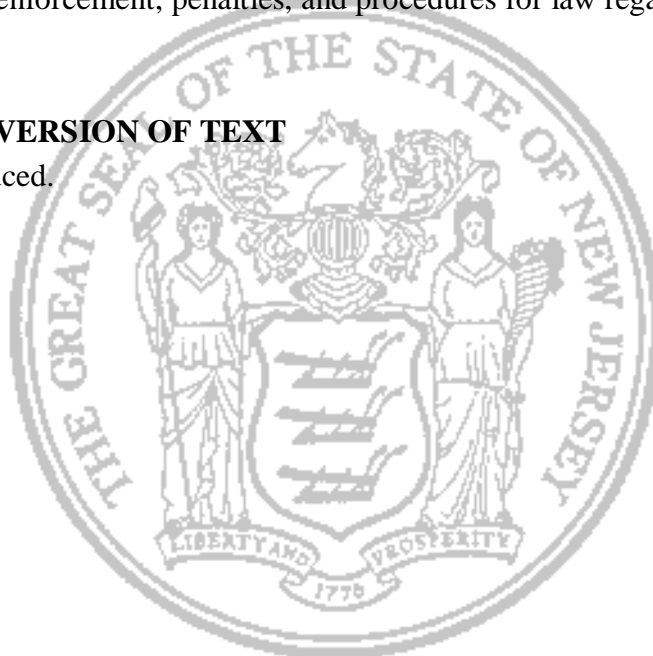
Assemblywoman Watson Coleman

SYNOPSIS

Concerns enforcement, penalties, and procedures for law regarding failure to pay wages.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/14/2012)

1 AN ACT concerning enforcement, penalties, and procedures for law
2 regarding failure to pay wages, supplementing chapter 11 of Title
3 34 of the Revised Statutes, and amending P.L.1990, c.90.

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

7
8 1. (New section) As used in sections 2 through 4 of this act:

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

12 "Commissioner" means the Commissioner of Labor and
13 Workforce Development.

14 "Community-based organization" means a public, or nonprofit
15 private, organization funded with public or private funds, or both,
16 that provides services to day laborers, migrant laborers, temporary
17 laborers, or any other type of employee.

18 "Department" means the Department of Labor and Workforce
19 Development.

20 "Legal services organization" means a public, or nonprofit
21 private, organization funded with public or private funds, or both,
22 that provides counseling or advice related to wage protection laws,
23 preparation of legal documents, or representation of any person
24 before a court or administrative agency.

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

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

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

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

35 (4) A certificate of limited partnership or a certificate of
36 authority pursuant to the "Uniform Limited Partnership Law
37 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

38 (5) A certificate of formation or certified registration pursuant
39 to the "New Jersey Limited Liability Company Act," P.L.1993,
40 c.210 (C.42:2B-1 et seq.); or the "Revised Uniform Limited
41 Liability Company Act," P.L.2012, c.50 (C.42:2C-1 et seq.); and

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

5 2. (New section) a. Upon the conviction of an employer under
6 subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2) the
7 Attorney General, or the Attorney General's designee, shall notify
8 the commissioner of the employer's conviction. Upon notification
9 by the Attorney General, or the Attorney General's designee, the
10 commissioner:

11 (1) Shall, after affording the employer or any successor firm of
12 the employer notice and an opportunity for a hearing in accordance
13 with the provisions of the "Administrative Procedure Act,"
14 P.L.1968, c.410 (C.52:14B-1 et seq.), issue a written determination
15 directing each appropriate agency to suspend any license issued by
16 the agency to the employer or successor firm, for a period of time
17 determined by the commissioner. In determining the length of a
18 suspension, the commissioner shall consider any of the following
19 factors which are relevant:

20 (a) The number of employees for which the employer or
21 successor firm failed to pay wages, compensation or benefits;

22 (b) The total amount of wages, compensation or benefits not
23 paid by the employer or successor firm;

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

25 (d) The duration of the violation;

26 (e) Whether the employer or successor firm was found to have
27 retaliated against an employee for filing a complaint under section
28 10 of P.L.1999, c.90 (C.2C:40A-2);

29 (f) Any prior misconduct by the employer or successor firm;
30 and

31 (g) Any other factors the commissioner considers relevant; and

32 (2) Shall conduct an audit or inspection of the employer or
33 successor firm not more than 12 months after the date of the
34 commissioner's written determination.

35 b. If, in the audit or inspection conducted pursuant to
36 subsection a. of this section, the commissioner determines that the
37 employer or successor firm has continued in its failure to pay
38 wages, compensation or benefits, or if the commissioner is notified
39 of a subsequent violation of subsection a. of section 10 of P.L.1999,
40 c.90 (C.2C:40A-2) by the employer, the commissioner, after
41 affording the employer or successor firm notice and an opportunity
42 for a hearing in accordance with the provisions of the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.), shall issue a written determination directing each appropriate
45 agency to permanently revoke any license that is issued by the
46 agency to the employer or any successor firm to the employer.

47 c. Upon receipt of any written determination of the
48 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

4 3. (New section) The department, for the purpose of supporting
5 the enforcement of section 10 of P.L.1999, c.90 (C.2C:40A-2),
6 shall:

7 a. Contract with community-based organizations and legal
8 services organizations to disseminate information to day laborers,
9 migrant laborers, temporary laborers, or any other type of employee
10 concerning the protections afforded by section 10 of P.L.1999, c.90
11 (C.2C:40A-2), and the process by which an individual may file a
12 complaint under that law.

13 b. Contract with community-based organizations and legal
14 services organizations to investigate, prepare, and if necessary,
15 represent employees that file complaints under section 10 of
16 P.L.1999, c.90 (C.2C:40A-2).

17 c. Require that community-based and legal services
18 organizations contracted by the department make all services
19 accessible to persons with limited English proficiency.

20 d. Determine the median hourly wage upon enactment of
21 P.L. , c. (C.) (pending before the Legislature as this bill), and on
22 July 1 of each year thereafter, for purposes of subsection e. of
23 section 10 of P.L.1999, c.90 (C.2C:40A-2).

24

25 4. (New section) The commissioner, in consultation with the
26 Administrative Director of the Courts and the Attorney General,
27 shall submit to the Legislature twice each year a report evaluating
28 the effectiveness of P.L. , c. (C.) (pending before the Legislature
29 as this bill). The report shall include, but not be limited to:

30 a. The number and nature of complaints, prosecutions,
31 dispositions, penalties, and business license suspensions and
32 revocations.

33 b. An enumeration and description of all community-based and
34 legal services organizations contracted by the department to support
35 the enforcement, as required by section 3 of this act.

36 c. Recommendations for strengthening the enforcement of this
37 act, and any other recommendations regarding the effectiveness of
38 this act.

39

40 5. Section 10 of P.L.1999, c.90 (C.2C:40A-2) is amended to
41 read as follows:

42 10. Violation of contract to pay employees.

43 a. An employer or agent of an employer who has agreed with
44 an employee or with a bargaining agent for employees to pay
45 wages, compensation or benefits to or for the benefit of employees
46 commits a disorderly persons offense if the employer or an agent of
47 the employer:

1 (1) fails to pay wages when due as agreed or as required by law;
2 or

3 (2) fails to pay compensation or benefits as agreed or as required
4 by law within 30 days after due.

5 b. If a corporate employer violates subsection a., any officer or
6 employee of the corporation who is responsible for the violation
7 commits a disorderly persons offense.

8 c. An employee may file a citizen complaint alleging a
9 violation of this section directly with a municipal court.

10 d. Upon the presentation of sufficient evidence of a violation of
11 this section, the fact finder may infer that an employer who fails to
12 present employee records, as required pursuant to State wage,
13 benefit and tax laws, employed the complainant for the period of
14 time, and owes the amount of wages, as alleged in the citizen
15 complaint.

16 e. For the purposes of this section, there shall be a rebuttable
17 presumption that an individual earning less than two thirds of the
18 median hourly wage, as determined by the Department of Labor and
19 Workforce Development, is an employee and not an independent
20 contractor. This rebuttable presumption may not be altered by any
21 contract, nor does this rebuttable presumption alter the existing
22 criteria for determining whether an individual is an independent
23 contractor pursuant to any applicable State wage, benefit and tax
24 laws.

25 f. A citizen complaint alleging a violation of this section shall
26 be filed where the offense occurred, which for purposes of this
27 section may be the place where the employee was hired or the place
28 where the relevant work was performed by the employee.

29 g. Jurisdiction for prosecution under this section shall be the
30 place where the offense occurred, which for purposes of this section
31 may be the place where the employee was hired or the place where
32 the relevant work was performed by the employee.

33 h. An employer found to have committed a violation of this
34 section shall pay the employee the wages owed plus liquidated
35 damages equal to 100 percent of the wages owed.

36 i. In addition to damages provided in this or any other law, an
37 employer found guilty of violating the provisions of this section
38 shall be fined \$500 plus a 20 percent penalty of the wages owed for
39 a first offense, and \$1,000 plus a 20 percent penalty of the wages
40 owed for subsequent offenses. Any sum collected as a fine or
41 penalty pursuant to this subsection shall be applied toward
42 enforcement and administration costs of the Division of Wage and
43 Hour Compliance in the Department of Labor and Workforce
44 Development.

45 j. An employer who is found to have retaliated against an
46 employee for filing a complaint under this section commits a
47 disorderly persons offense and shall be liable to the employee for
48 damages.

1 k. For purposes of this section:

2 “Compensation or benefits” is remuneration received in return
3 for services rendered and includes, but is not limited to, health
4 benefits, pensions, medical treatment, disability compensation and
5 workers’ compensation, including death benefits to dependents of
6 workers who have died as a result of their employment.

7 “Employee” means any person suffered or permitted to work by
8 an employer, except that independent contractors and
9 subcontractors shall not be considered employees.

10 “Employer” means any individual, partnership, association, joint
11 stock company, trust, corporation, the administrator or executor of
12 the estate of a deceased individual, or the receiver, trustee, or
13 successor of any of the same, employing any person in this State.
14 For the purposes of this section the officers of a corporation and any
15 agents having the management of such corporation shall be deemed
16 to be the employers of the employees of the corporation.

17 “Median hourly wage” means the hourly wage as determined by
18 the Department of Labor and Workforce Development pursuant to
19 subsection d. of section 3 of P.L. , c. (C.) (pending before the
20 Legislature as this bill).

21 “State wage, benefit and tax laws” means:

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

23 (2) The “New Jersey Prevailing Wage Act,” P.L.1963, c.150
24 (C.34:11-56.25 et seq.);

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

27 (4) The workers’ compensation law, R.S.34:15-1 et seq.;

28 (5) The “unemployment compensation law,” R.S.43:21-1 et
29 seq.;

30 (6) The “Temporary Disability Benefits Law,” P.L.1948, c.110
31 (C.43:21-25 et al.);

32 (7) P.L.2008, c.17 (C.43:21-39.1 et al); and

33 (8) The “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et
34 seq.

35 “Wages” means the direct monetary compensation for labor or
36 services rendered by an employee, where the amount is determined
37 on a time, task, piece, or commission basis, including overtime pay
38 and pay for sick, vacation, or other paid leave, and excluding any
39 form of supplementary incentives and bonuses which are calculated
40 independently of regular wages and paid in addition thereto.

41 “When due” is the time agreed upon by the employer and
42 employee but in any case not greater than 16 days of completion of
43 the work as provided for under section 2 of P.L.1965, c.173
44 (C.34:11-4.2) and in accordance with a bi-monthly payment
45 schedule.

46 (cf: P.L.1999, c.90, s.10)

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48 6. This act shall take effect immediately.

STATEMENT

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The bill revises the current provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2), to strengthen enforcement procedures and criminal sanctions against employers who fail to pay wages, compensation or benefits to their employees. The bill imposes criminal sanctions against employers who retaliate against employees who file complaints under the statute and establishes definitions of key terms and phrases found in the statute.

Under this bill, an employer found to have committed a violation is required to pay the employee wages owed, plus liquidated damages equal to 100% of the wages owed. In addition to the damages, an employer found guilty of a violation is fined \$500 plus a penalty of 20% of the wages owed for a first offense, and a fine of \$1,000 plus a penalty of 20% of the wages owed for subsequent offenses. The bill also provides that an employer who is found to have retaliated against an employee for bringing a claim under the statute commits a disorderly persons offense and is liable to the employee for damages.

The statute is further amended to provide procedures for filing a complaint. The bill allows an employee to file a citizen complaint directly with a municipal court. The citizen complaint may be filed where the employee was hired or the place where the relevant work was performed by the employee.

The bill amends the statute to provide, upon the presentation of sufficient evidence of a violation of the statute, that the fact finder may infer that an employer who fails to present employee records, as required by laws specified in the bill regarding wages, benefits and taxes, employed the complainant for the period of time, and owes the amount of wages, as alleged in the citizen complaint.

The statute is also amended to establish a rebuttable presumption that an individual earning less than two thirds of the median hourly wage is an employee and not an independent contractor. This rebuttable presumption may not be altered by any contract, and the rebuttable presumption does not alter the existing criteria for determining whether an individual is an independent contractor pursuant to any applicable State wage, benefit and tax laws.

The bill provides that the Department of Labor and Workforce Development is to determine the “median hourly wage” upon enactment of this bill and on July 1 of each year thereafter.

The bill also requires the Attorney General, or the Attorney General’s designee, to notify the Commissioner of Labor and Workforce Development when an employer is convicted under the statute. Upon notification of a conviction, the commissioner may, after affording the employer notice and an opportunity for a hearing, issue a written determination directing each appropriate agency to suspend any license that is issued by the agency to the employer for a period of time determined by the commissioner

1 based on certain factors. The bill also requires the commissioner to
2 conduct an audit or inspection of the employer not more than 12
3 months after the date of the commissioner's written determination.

4 The bill further provides that if, in the audit or inspection, the
5 commissioner determines that the employer or successor firm has
6 continued in its failure to pay wages, compensation or benefits, or if
7 the commissioner is notified of a subsequent violation by the
8 employer of the statute, the commissioner, after affording the
9 employer or successor firm notice and an opportunity for a hearing,
10 is required to issue a written determination directing each
11 appropriate agency to permanently revoke any license that is issued
12 by the agency to the employer or any successor firm.

13 The Department of Labor and Workforce Development, under
14 this bill, is required to contract with community-based
15 organizations and legal services organizations to disseminate
16 information regarding the protections and procedures established in
17 the statute, as well as to investigate, prepare, and if necessary,
18 represent employees that file complaints under the statute. The bill
19 also requires that community-based and legal services organizations
20 contracted by the department make all services accessible to
21 persons with limited English proficiency.

22 Finally, the commissioner, in consultation with the
23 Administrative Director of the Courts and the Attorney General, is
24 required to submit to the Legislature twice each year a report
25 evaluating the effectiveness of the provisions of this bill and
26 recommendations for strengthening its enforcement.