

SENATE, No. 240

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senators Pennacchio, Doherty, Cardinale and A.R.Bucco

SYNOPSIS

“New Jersey Jobs Protection Act;” requires verification of employment.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 11/20/2012)

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2

1 AN ACT concerning the employment of unauthorized aliens,
2 designated as the “New Jersey Jobs Protection Act” and
3 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. This act shall be known and may be cited as the “New Jersey
9 Jobs Protection Act.”
10
- 11 2. The Legislature finds and declares that:
- 12 a. The State of New Jersey’s economy is currently in recession,
13 resulting in a large number of lost jobs and lost job opportunities
14 for State residents;
- 15 b. The current loss of jobs and job opportunities in New Jersey
16 is part of a larger trend of private sector job loss in the State in
17 recent years;
- 18 c. The loss of jobs and job opportunities has resulted in an ever
19 increasing number of unemployment benefit claims being filed by
20 New Jersey residents;
- 21 d. The ever increasing number of individuals collecting
22 unemployment compensation benefits is rapidly depleting the
23 State’s unemployment compensation fund;
- 24 e. The State’s unemployment compensation fund is funded
25 through a tax on employers and employees of the State and if the
26 reserve of the fund falls below a certain level, it triggers a tax
27 increase to New Jersey businesses, which are already under
28 considerable financial pressure;
- 29 f. The State has a fiscal and moral responsibility to implement
30 public policies that foster economic growth and full employment for
31 all legal residents of the State;
- 32 g. In November, 2008, an estimated 275,100 persons were
33 unemployed in New Jersey;
- 34 h. In 2007, an estimated 470,000 citizens of foreign nations
35 were living in New Jersey in violation of federal immigration laws;
36 these individuals are known as unauthorized aliens;
- 37 i. Many of these unauthorized aliens are being employed by
38 unscrupulous New Jersey employers and therefore denying jobs to
39 legal State residents;
- 40 j. Many of these unauthorized aliens are paid substandard
41 wages and are purposely misclassified to avoid paying State taxes
42 and contributing to State benefit programs, such as unemployment
43 compensation;
- 44 k. Such illegal and unfair competition results in: fewer
45 employment opportunities for legal residents; a reduction in State
46 tax revenues; a continued decline of the State’s unemployment
47 insurance fund; a decrease in wages for legal residents; an unfair

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1 economic advantage to those employers who do not pay their fair
2 share of State tax obligations; a negative effect on the State's
3 economy; significant uncompensated costs to local governments
4 and taxpayers; additional unauthorized aliens entering or remaining
5 in New Jersey illegally; and, an erosion of public respect for the
6 rule of law in New Jersey and the United States;

7 1. The public interest requires that the State of New Jersey hold
8 such unscrupulous employers accountable for their illegal actions,
9 enforce applicable State laws, and impose appropriate penalties to
10 deter such conduct in the future;

11 m. Employers in New Jersey can now verify that the individuals
12 they employ are eligible for lawful employment in this State
13 through the federal E-verify program;

14 n. The State must take action to protect law abiding employers
15 and employees and ensure that employers who continue to violate
16 the laws of this State are dealt a progressive series of monetary
17 penalties that will discourage any future violations.

18

19 3. As used in this act:

20 "Employee" means an individual who is employed by an
21 employer.

22 "Employer" means an individual or entity that transacts business
23 in this State that employs one or more individuals who perform
24 employment services in this State. "Employer" includes the State,
25 any political subdivision of this State and self-employed persons.

26 "E-verify" means the basic employment verification program as
27 jointly administered by the United States Department of Homeland
28 Security and the Social Security Administration or its successor
29 program.

30 "Intentionally" means, with respect to a result or to conduct
31 described in this act, that a person's objective is to cause that result
32 or to engage in that conduct.

33 "Knowingly employ an unauthorized alien" means those actions
34 described in 8 U.S.C. s.1324a. This term shall be interpreted
35 consistently with 8 U.S.C. s.1324a and any applicable federal rules
36 and regulations.

37 "Unauthorized alien" means an alien who does not have the legal
38 right or authorization under federal law to work in the United States
39 as described in 8 U.S.C. s.1324a(h)(3).

40

41 4. a. An employer shall not intentionally employ an
42 unauthorized alien or knowingly employ an unauthorized alien.

43 b. On receipt of a complaint that an employer allegedly
44 intentionally employs an unauthorized alien or knowingly employs
45 an unauthorized alien, the Attorney General or county prosecutor
46 shall investigate whether the employer has violated subsection a. of
47 this section. When investigating a complaint, the Attorney General

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1 or county prosecutor shall verify the work authorization of the
2 alleged unauthorized alien with the federal government pursuant to
3 8U.S.C. s.1373(c). A state, county or local official shall not attempt
4 to independently make a final determination as to whether an alien
5 is authorized to work in the United States. An alien's immigration
6 status or work authorization status shall be verified with the federal
7 government pursuant to 8 U.S.C. s.1373(c).

8 c. If, after an investigation, the Attorney General or county
9 prosecutor determines that the complaint is not frivolous:

10 (1) The Attorney General or county prosecutor shall notify the
11 United States Immigration and Customs Enforcement of the
12 unauthorized alien.

13 (2) The Attorney General or county prosecutor shall notify the
14 local law enforcement agency of the unauthorized alien.

15 (3) The Attorney General shall notify the appropriate county
16 prosecutor to bring an action pursuant to section 5 of this act if the
17 complaint was originally filed with the Attorney General.

18

19 5. a. An action for a violation of section 4 of this act shall be
20 brought against the employer by the county prosecutor in the county
21 where the unauthorized alien employee is employed. The county
22 prosecutor shall not bring an action against any employer for any
23 violation of subsection a. of this section that occurs before July 1,
24 2011.

25 b. For any action in Superior Court under this act, the court
26 shall expedite the action, including assigning the hearing at the
27 earliest practicable date.

28

29 6. On a finding of a violation of section 4 of this act:

30 a. For a first violation during a three year period that is a
31 knowing violation the court:

32 (1) Shall order the employer to terminate the employment of all
33 unauthorized aliens.

34 (2) Shall order the employer to be subject to a three year
35 probationary period. During the probationary period the employer
36 shall file quarterly reports with the county prosecutor. The reports
37 shall include, but not be limited to, documentation of the E-verify
38 confirmation of each new employee who is hired by the employer at
39 the specific location where the unauthorized alien performed work.

40 (3) Shall order the employer to pay a penalty of \$10,000 for
41 each unauthorized alien employed by the employer at the time the
42 action against the employer is filed with the county prosecutor or
43 the Attorney General. All moneys recovered from a penalty
44 imposed pursuant to this section shall be paid into the State
45 Treasury to the credit of the General Fund.

46 b. For a second violation of section 4 of this act during the
47 period of probation, the court:

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1 (1) Shall order the employer to terminate the employment of all
2 unauthorized aliens.

3 (2) Shall order the employer to be subject to an additional five
4 year probationary period. During the probationary period the
5 employer shall file quarterly reports with the county prosecutor.
6 The reports shall include, but not be limited to, documentation of
7 the E-verify confirmation of each new employee who is hired by the
8 employer at the specific location where the unauthorized alien
9 performed work.

10 (3) Shall order the employer to pay a penalty of \$20,000 for
11 each unauthorized alien employed by the employer at the time of
12 the action against the employer being filed with the county
13 prosecutor or the Attorney General. All moneys recovered from a
14 penalty imposed pursuant to this section shall be paid into the State
15 Treasury to the credit of the General Fund.

16 c. For a third violation of section 4 of this act during the period
17 of probation, the court:

18 (1) Shall order the employer to terminate the employment of all
19 unauthorized aliens.

20 (2) Shall order the employer to pay a penalty of \$30,000 for
21 each unauthorized alien employed by the employer at the time of
22 the action against the employer being filed with the county
23 prosecutor or the Attorney General. All moneys recovered from a
24 penalty imposed pursuant to this section shall be paid into the State
25 Treasury to the credit of the General Fund.

26
27 7. The Attorney General shall maintain copies of court orders
28 that are received pursuant to section 6 of this act and shall maintain
29 a database of the employers who have been found to have
30 committed a first violation of subsection a. of section 4 of this act
31 and make the court orders available on the Attorney General's
32 website.

33
34 8. a. In determining whether an employee is an unauthorized
35 alien, the court shall consider only the federal government's
36 determination pursuant to 8 U.S.C. s.1373(c). The federal
37 government's determination creates a rebuttable presumption of the
38 employee's lawful status. The court may take judicial notice of the
39 federal government's determination and may request the federal
40 government to provide automated or testimonial verification
41 pursuant to 8 U.S.C. s.1373(c).

42 b. For the purposes of this section, proof of verifying the
43 employment authorization of an employee through the E-verify
44 program creates a rebuttable presumption that an employer did not
45 intentionally employ an unauthorized alien or knowingly employ an
46 unauthorized alien.

1 c. For the purposes of this section, an employer who
2 establishes that it has complied in good faith with the requirements
3 of 8 U.S.C.s.1324b establishes an affirmative defense that the
4 employer did not intentionally or knowingly employ an
5 unauthorized alien.

6
7 9. This act shall not be construed to require an employer to take
8 any action that the employer believes in good faith would violate
9 federal or State law.

10
11 10. After December 31, 2011, every employer, after hiring an
12 employee, shall verify the employment eligibility of the employee
13 through the E-verify program, within ninety days of date of hire.

14
15 11. The Attorney General, pursuant to the “Administrative
16 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt
17 rules and regulations necessary to effectuate the purposes of this
18 act.

19
20 12. This act shall take effect immediately.

21

22

23 STATEMENT

24

25 This bill, the “New Jersey Jobs Protection Act,” requires that all
26 employers use the federal “E-verify” system to check the
27 employment eligibility of each new hire, within ninety days of the
28 date of hire.

29 The bill establishes a graduated penalty system against any
30 employer who knowingly employs unauthorized aliens. The penalty
31 for the first offense will be a \$10,000 fine for each unauthorized
32 alien and three years of monitored probation. During the
33 probationary period the employer is required to file quarterly
34 reports with the county prosecutor. The reports must include, but
35 shall not be limited to, documentation of the E-verify confirmation
36 of each new employee who is hired by the employer at the location
37 where the unauthorized alien performed work.

38 The penalty for a second offense will be a \$20,000 fine for each
39 unauthorized alien and an additional five years of monitored
40 probation. The penalty for a third offense will be a \$30,000 fine for
41 each unauthorized alien.

42 Under the bill, proof that the employee’s eligibility to work was
43 confirmed through the E-verify program creates a rebuttable
44 presumption that the employer did not intentionally or knowingly
45 employ an unauthorized alien.

46 E-verify is an Internet-based system operated jointly by the
47 Department of Homeland Security and the Social Security

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- 1 Administration. It provides an automated link to federal databases
- 2 to help employers determine employment eligibility of new hires
- 3 and the validity of their Social Security numbers. It is currently
- 4 available to employers without charge.