

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY No. 862

STATE OF NEW JERSEY
217th LEGISLATURE

ADOPTED DECEMBER 12, 2016

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman ELIZABETH MAHER MUOIO

District 15 (Hunterdon and Mercer)

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

SYNOPSIS

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

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Labor Committee.



1 AN ACT concerning enforcement, penalties, and procedures for law
2 regarding failure to pay wages, revising various parts of the
3 statutory law, and supplementing article 3 of chapter 11 of Title
4 34 of the Revised Statutes.

5

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

8

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

11 10. Violation of contract to pay employees.

12 a. An employer who has agreed with an employee or with a
13 bargaining agent for employees to pay wages, compensation or
14 benefits to or for the benefit of employees commits a disorderly
15 persons offense if the employer:

16 (1) fails to pay wages when due and as required by law; or

17 (2) fails to pay compensation or benefits as agreed and as
18 required by law, including all State wage, benefit and tax laws
19 within 30 days after due.

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

23 c. Upon the presentation of sufficient evidence of a violation of
24 this section, the fact finder may infer that an employer who fails to
25 present employee records, as required pursuant to State wage,
26 benefit and tax laws, employed the complainant for the period of
27 time, and owes the amount of wages, as alleged in the complaint,
28 unless the employer demonstrates good cause for the failure to
29 present employee records.

30 d. A complaint alleging a violation of this section shall be filed
31 where the offense occurred, which for purposes of this section may
32 be the place where the employee was hired or the place where the
33 relevant work was performed by the employee.

34 e. Jurisdiction for prosecution under this section shall be the
35 place where the offense occurred, which for purposes of this section
36 may be the place where the employee was hired or the place where
37 the relevant work was performed by the employee.

38 f. An employer found to owe wages to an employee because
39 the employer committed a violation of this section shall pay the
40 employee the wages owed plus liquidated damages equal to 200
41 percent of the wages owed, and reasonable costs of the action to the
42 employee.

43 g. In addition to damages provided in this or any other law, an
44 employer found guilty of violating the provisions of this section

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 shall be fined \$500 plus a penalty equal to 20 percent of any wages
2 owed for a first offense, and \$1,000 plus a penalty equal to 20
3 percent of any wages owed for subsequent offenses. Any sum
4 collected as a fine or penalty pursuant to this subsection shall be
5 applied toward enforcement and administration costs of the
6 Division of Wage and Hour Compliance in the Department of Labor
7 and Workforce Development.

8 h. An employer who is found to have retaliated against an
9 employee for filing a complaint under this section commits a
10 disorderly persons offense and shall, upon conviction for the
11 violation, be fined not less than \$100 nor more than \$1,000, and
12 shall be liable to the employee for all wages lost as a result of the
13 retaliation plus damages equal to 200 percent of the wages lost as a
14 result of the retaliation, and reasonable costs of the action to the
15 employee and, if the employee was discharged, be required to offer
16 reinstatement, unless the reinstatement is prohibited by law.

17 i. No payment of an amount of wages owed or related
18 damages, including wages or damages related to retaliation, shall be
19 required under this section in addition to any amount of wages and
20 damages paid for the same violation pursuant to any action taken
21 under State wage and hour laws.

22 j. For purposes of this section:

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

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

31 “Employer” means any individual, partnership, association, joint
32 stock company, trust, corporation, the administrator or executor of
33 the estate of a deceased individual, or the receiver, trustee, or
34 successor of any of the same, employing any person in this State.
35 For the purposes of this section the officers of a corporation and any
36 agents having the management of that corporation shall be deemed
37 to be the employers of the employees of the corporation.

38 “State wage and hour laws” means article 1 of chapter 11 of Title
39 34 of the Revised Statutes and all acts supplementing that article
40 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
41 act (C.34:11-56a et al.), and article 3 of chapter 11 of Title 34 of the
42 Revised Statutes (R.S.34:11-57 et seq.);

43 “State wage, benefit and tax laws” means State wage and hour
44 laws and all of the following:

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

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

1 (3) The “unemployment compensation law,” R.S.43:21-1 et
2 seq.;
3 (4) The “Temporary Disability Benefits Law,” P.L.1948, c.110
4 (C.43:21-25 et al.);
5 (5) P.L.2008, c.17 (C.43:21-39.1 et al.); and
6 (6) The “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et
7 seq.
8 “When due” is the time agreed upon by the employer and
9 employee but in any case not greater than 16 days of completion of
10 the work as provided for under section 2 of P.L.1965, c.173
11 (C.34:11-4.2) and in accordance with a bi-monthly payment
12 schedule.
13 (cf: P.L.1999, c.90, s.10)

14
15 2. Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is amended to
16 read as follows:

17 2. a. If the commissioner is notified pursuant to subsection g.
18 of this section by the Attorney General, the Attorney General’s
19 designee, or a court, of a conviction of an employer under
20 subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2), or if the
21 commissioner determines that an employer has failed, for one or
22 more of its employees, to maintain and report every record
23 regarding wages, benefits and taxes which the employer is required
24 to maintain and report pursuant to State wage, benefit and tax laws,
25 as defined in section 1 of this act, and has, in connection with that
26 failure to maintain or report the records, failed to pay wages,
27 benefits, taxes or other contributions or assessments as required by
28 those laws, the commissioner shall, as an alternative to, or in
29 addition to, any other actions taken in the enforcement of those
30 laws, notify the employer of the determination and have an audit of
31 the employer and any successor firm of the employer conducted not
32 more than 12 months after the determination.

33 b. If, in an audit conducted pursuant to subsection a. of this
34 section, the commissioner determines that the employer or any
35 successor firm to the employer has continued in its failure to
36 maintain or report records as required by those laws and continued
37 in its failure to pay wages, benefits, taxes or other contributions or
38 assessments as required by those laws, or if the commissioner is
39 notified pursuant to subsection g. of this section of a subsequent
40 conviction of the employer under subsection a. of section 10 of
41 P.L.1999, c.90 (C.2C:40A-2), the commissioner:

42 (1) May, after affording the employer or successor firm notice
43 and an opportunity for a hearing in accordance with the provisions
44 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
45 1 et seq.), issue a written determination directing any appropriate
46 agency to suspend any one or more licenses that are held by the
47 employer or successor firm, for a period of time determined by the
48 commissioner. In determining the length of a suspension, the

1 commissioner shall consider any of the following factors which are
2 relevant:

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

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

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

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

13 (e) The duration of the violation;

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

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

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

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

22 c. If, in the subsequent audit or inspection conducted pursuant
23 to subsection b. of this section, the commissioner determines that
24 the employer or successor firm has continued in its failure to
25 maintain or report records as required pursuant to State wage,
26 benefit and tax laws, as defined in section 1 of this act, and
27 continued in its failure to pay wages, benefits, taxes or other
28 contributions or assessments as required by those laws, or if the
29 commissioner is notified pursuant to subsection g. of this section of
30 a subsequent conviction of the employer under subsection a. of
31 section 10 of P.L.1999, c.90 (C.2C:40A-2), the commissioner, after
32 affording the employer or successor firm notice and an opportunity
33 for a hearing in accordance with the provisions of the
34 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
35 seq.), shall issue a written determination directing any appropriate
36 agency to permanently revoke any one or more licenses that are
37 held by the employer or any successor firm to the employer and that
38 are necessary to operate the employer or successor firm.

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

43 e. In instances where an employee leasing company has
44 entered into an employee leasing agreement with a client company
45 pursuant to P.L.2001, c.260 (C.34:8-67 et seq.), any written
46 determination by the commissioner directing agencies to suspend an
47 employer license pursuant to subsection b. of this section, or revoke
48 an employer license pursuant to subsection c. of this section, for a

1 failure or continued failure to keep records regarding, and to pay,
2 wages, benefits and taxes pursuant to State wage, benefit and tax
3 laws, shall be for the suspension or revocation of the licenses of the
4 client company and not the licenses of the employee leasing
5 company if the commissioner determines that the failure or
6 continued failure was caused by incomplete, inaccurate, misleading,
7 or false information provided to the employee leasing company by
8 the client company. Nothing in this subsection shall be construed
9 as diminishing or limiting the authority or obligation of the
10 commissioner to rescind the registration of an employee leasing
11 company pursuant to the provisions of section 10 of P.L.2001,
12 c.260 (C.34:8-76).

13 f. If, in the course of an audit or inspection conducted pursuant
14 to this section, the commissioner discovers that an employee of the
15 employer or of any successor firm of the employer has failed to
16 provide compensation to the employee as required under any of the
17 State wage and hour laws as defined in section 10 of P.L.1999, c.90
18 (C.2C:40A-2), then the commissioner shall initiate a wage claim on
19 behalf of the employee pursuant to R.S.34:11-58.

20 g. Upon the conviction of an employer under subsection a. of
21 section 10 of P.L.1999, c.90 (C.2C:40A-2) the Attorney General,
22 the Attorney General's designee, or the court shall notify the
23 commissioner of the employer's conviction.
24 (cf: P.L.2009, c.194, s.2)

25
26 3. Section 10 of P.L.1965, c.173 (C.34:11-4.10) is amended to
27 read as follows:

28 10. a. Any employer who knowingly and willfully violates any
29 provision of P.L.1965, c.173 (34:11-4.1 et seq.), or who discharges,
30 or in any other manner discriminates against an employee because
31 the employee has made a complaint to that employee's employer, to
32 the commissioner, or to that employee's authorized representative,
33 that the employer has not paid the employee the full amount of
34 wages agreed upon or required by, and in the manner required by,
35 the provisions of article 1 of chapter 11 of Title 34 of the Revised
36 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),
37 or because the employee has caused to be instituted or is about to
38 cause to be instituted any proceeding under or related to that article
39 or those acts, or because that employee has testified or is about to
40 testify in any proceeding under or relating to that article or those
41 acts, or because the employee has informed any person about rights
42 under State laws regarding wages and hours worked, shall be guilty
43 of a disorderly persons offense and, upon conviction for a violation,
44 shall be punished by a fine of not less than \$100 nor more than
45 \$1,000. Each day during which any violation of [this act] article 1
46 of chapter 11 of Title 34 of the Revised Statutes and all acts
47 supplementing that article (R.S.34:11-2 et al.) continues shall
48 constitute a separate and distinct offense. In the case of a discharge

1 or other discriminatory action against the employee which is in
2 violation of this subsection, the employer shall be required to offer
3 reinstatement in employment to the discharged employee, unless the
4 reinstatement is prohibited by law, and to correct the discriminatory
5 action, and also to pay to the employee, in full, all wages lost as a
6 result of that discharge or discriminatory action, plus any
7 reasonable cost of the action, and liquidated damages equal to 200
8 percent of the wages due, under penalty of contempt proceedings.
9 Taking an adverse action against an employee within ninety days of
10 the employee filing a complaint with the commissioner for a
11 violation of article 1 of chapter 11 of Title 34 of the Revised
12 Statutes and all acts supplementing that article (R.S.34:11-2 et al.)
13 shall raise a presumption that the action was a discriminatory action
14 taken in retaliation, which may be rebutted only by clear and
15 convincing evidence that the action was taken for other,
16 permissible, reasons. An employee complaint or other
17 communication need not make explicit reference to any section or
18 provision of any State law regarding wages and hours worked to
19 trigger the protections of this section.

20 b. As an alternative to or in addition to any other sanctions
21 provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et
22 seq.), when the Commissioner of Labor and Workforce
23 Development finds that an employer has violated that act, or taken
24 any discriminatory action against the employee in violation of
25 subsection a. of this section, the commissioner is authorized to
26 assess and collect administrative penalties, up to a maximum of
27 \$250 for a first violation and up to a maximum of \$500 for each
28 subsequent violation, specified in a schedule of penalties to be
29 promulgated as a rule or regulation by the commissioner in
30 accordance with the "Administrative Procedure Act," P.L.1968,
31 c.410 (C.52:14B-1 et seq.). When determining the amount of the
32 penalty imposed because of a violation, the commissioner shall
33 consider factors which include the history of previous violations by
34 the employer, the seriousness of the violation, the good faith of the
35 employer and the size of the employer's business. No
36 administrative penalty shall be levied pursuant to this section unless
37 the Commissioner of Labor and Workforce Development provides
38 the alleged violator with notification of the violation and of the
39 amount of the penalty by certified mail and an opportunity to
40 request a hearing before the commissioner or his designee within 15
41 days following the receipt of the notice. If a hearing is requested,
42 the commissioner shall issue a final order upon such hearing and a
43 finding that a violation has occurred. If no hearing is requested, the
44 notice shall become a final order upon expiration of the 15-day
45 period. Payment of the penalty is due when a final order is issued
46 or when the notice becomes a final order. Any penalty imposed
47 pursuant to this section may be recovered with costs in a summary
48 proceeding commenced by the commissioner pursuant to **["the**
49 **penalty enforcement law"** (N.J.S.2A:58-1 et seq.)**]** the "Penalty

1 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.).
2 Any sum collected as a fine or penalty pursuant to this section shall
3 be applied toward enforcement and administration costs of the
4 Division of Workplace Standards in the Department of Labor and
5 Workforce Development.

6 c. If any employer fails to pay the full amount of wages to an
7 employee agreed to or required by, or in the manner required by,
8 the provisions of article 1 of chapter 11 of Title 34 of the Revised
9 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),
10 the employee may recover in a civil action the full amount of any
11 wages due, or any wages due because of any discriminatory action
12 in violation of subsection a. of this section, plus an amount of
13 liquidated damages equal to 200 percent of the wages due, together
14 with costs and reasonable attorney's fees as are allowed by the
15 court, except that if there is an agreement of the employee to accept
16 payment of the unpaid wages supervised by the commissioner
17 pursuant to section 9 of P.L.1965, c.173 (C.34:11-4.9) or R.S.34:11-
18 58, the liquidated damages shall be equal to 200 percent of wages
19 that were due prior to the supervised payment. Any agreement by
20 the employee to work for, or accept, wages paid which are less than
21 the amount agreed to or required by law, or paid in a manner other
22 than that required by article 1 of chapter 11 of Title 34 of the
23 Revised Statutes and all acts supplementing that article (R.S.34:11-
24 2 et al.), shall be no defense to the action. The employee shall be
25 entitled to maintain the action for and on behalf of other similarly
26 situated employees, or designate an agent or representative to
27 maintain the action for and on behalf of all similarly situated
28 employees. The employee may bring the action to recover unpaid
29 wages pursuant to this section in the Superior Court, and may bring
30 the action in the Division of Small Claims of the Superior Court,
31 Law Division, Special Civil Part if the sum of the unpaid wages and
32 the liquidated damages does not exceed the jurisdictional limits of
33 the Division of Small Claims. Upon the request of any employee
34 not paid the full wages agreed upon or required by law and in the
35 manner required by the provisions of article 1 of chapter 11 of Title
36 34 of the Revised Statutes and all acts supplementing that article
37 (R.S.34:11-2 et al.), the commissioner may take an assignment of
38 the wage claim in trust for the assigning employee and may bring
39 any legal action necessary to collect the claim, and the employer
40 shall be required to pay to the employee the unpaid wages and
41 liquidated damages equal to 200 percent of the amount of the
42 unpaid wages and pay to the commissioner the costs and reasonable
43 attorney's fees as determined by the court.

44 (cf: P.L.1991, c.205, s.3)

45

46 4. Section 25 of P.L.1966, c.113 (C.34:11-56a24) is amended
47 to read as follows:

48 25. a. Any employer who discharges or in any other manner
49 discriminates against any employee because the employee has made
50 any complaint to his employer, to the commissioner, the director or

1 to their authorized representatives, or to a representative of the
2 employee, that he has not been paid wages in accordance with the
3 provisions of this act, or because such employee has caused to be
4 instituted or is about to cause to be instituted any proceeding under
5 or related to this act, or because such employee has testified or is
6 about to testify in any such proceeding, or because such employee
7 has served or is about to serve on a wage board, or because the
8 employee has informed any person about rights under State laws
9 regarding wages and hours of work, shall be guilty of a disorderly
10 persons offense and shall, upon conviction therefor, be fined not
11 less than \$100 nor more than \$1,000. Such employer shall be
12 required, as a condition of such judgment of conviction, to offer
13 reinstatement in employment to any such discharged employee,
14 unless the reinstatement is prohibited by law, and to correct any
15 such discriminatory action, and also to pay to any such employee in
16 full, all wages lost as a result of such discharge or discriminatory
17 action and an additional amount of liquidated damages equal to 200
18 percent of the wages due, under penalty of contempt proceedings
19 for failure to comply with such requirement. Taking an adverse
20 action against an employee within ninety days of the employee
21 filing a complaint with the commissioner for a violation of
22 P.L.1966, c.113 (C.34:11-56a et seq.) shall raise a presumption that
23 the action was a discriminatory action taken in retaliation, which
24 may be rebutted only by clear and convincing evidence that the
25 action was taken for other, permissible, reasons. An employee
26 complaint or other communication need not make explicit reference
27 to any section or provision of State law regarding wages or hours
28 worked to trigger the protections of this section.

29 b. As an alternative to or in addition to any other sanctions
30 provided by law for violations of P.L.1966, c.113 (C.34:11-56a et
31 seq.), when the Commissioner of Labor and Workforce
32 Development finds that an employer has violated that act, or taken
33 any discriminatory action against the employee in violation of
34 subsection a. of this section, the commissioner is authorized to
35 assess and collect administrative penalties, up to a maximum of
36 \$250 for a first violation and up to a maximum of \$500 for each
37 subsequent violation, specified in a schedule of penalties to be
38 promulgated as a rule or regulation by the commissioner in
39 accordance with the "Administrative Procedure Act," P.L.1968,
40 c.410 (C.52:14B-1 et seq.). When determining the amount of the
41 penalty imposed because of a violation, the commissioner shall
42 consider factors which include the history of previous violations by
43 the employer, the seriousness of the violation, the good faith of the
44 employer and the size of the employer's business. No
45 administrative penalty shall be levied pursuant to this section unless
46 the Commissioner of Labor and Workforce Development provides
47 the alleged violator with notification of the violation and of the
48 amount of the penalty by certified mail and an opportunity to
49 request a hearing before the commissioner or his designee within 15

1 days following the receipt of the notice. If a hearing is requested,
2 the commissioner shall issue a final order upon such hearing and a
3 finding that a violation has occurred. If no hearing is requested, the
4 notice shall become a final order upon expiration of the 15-day
5 period. Payment of the penalty is due when a final order is issued
6 or when the notice becomes a final order. Any penalty imposed
7 pursuant to this section may be recovered with costs in a summary
8 proceeding commenced by the commissioner pursuant to **["the**
9 **penalty enforcement law" (N.J.S.2A:58-1 et seq.)]** the "Penalty
10 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
11 Any sum collected as a fine or penalty pursuant to this section shall
12 be applied toward enforcement and administration costs of the
13 Division of Workplace Standards in the Department of Labor and
14 Workforce Development.
15 (cf: P.L.1991, c.205, s.22)

16
17 5. Section 26 of P.L.1966, c.113 (C.34:11-56a25) is amended
18 to read as follows:

19 26. If any employee is paid by an employer less than the
20 minimum fair wage to which **[such]** the employee is entitled under
21 the provisions of **[this act]** P.L.1966, c.113 (C.34:11-56a et seq.) or
22 by virtue of a minimum fair wage order **[such]**, the employee may
23 recover in a civil action the full amount of **[such]** that minimum
24 wage less any amount actually paid to him or her by the employer
25 **[together with]** and an additional amount equal to 200 percent of
26 the amount of the unpaid minimum wages as liquidated damages,
27 plus costs and [such] reasonable attorney's fees as [may be
28 allowed] determined by the court, [and any] except that if there is
29 an agreement of the employee to accept payment of the unpaid
30 wages or compensation supervised by the commissioner pursuant to
31 section 24 of P.L.1966, c.113 (C.34:11-56a23) or R.S.34:11-58, the
32 liquidated damages shall be equal to 200 percent of wages that were
33 due prior to the supervised payment. Any agreement between
34 **[such]** the employee and the employer to work for less than **[such]**
35 the minimum fair wage shall be no defense to the action. An
36 employee shall be entitled to maintain **[such]** the action for and on
37 behalf of himself or other employees similarly situated, and **[such]**
38 the employee and employees may designate an agent or
39 representative to maintain **[such]** the action for and on behalf of all
40 employees similarly situated. The employee may bring the action
41 to recover unpaid minimum wages pursuant to this section in the
42 Superior Court, and may bring the action in the Division of Small
43 Claims of the Superior Court, Law Division, Special Civil Part if
44 the sum of the amount of unpaid minimum wages and the amount of
45 liquidated damages does not exceed the jurisdictional limits of the
46 Division of Small Claims.

1 At the request of any employee paid less than the minimum wage
2 to which **such** the employee was entitled under the provisions of
3 **this act** P.L.1966, c.113 (C.34:11-56a et seq.) or under an order,
4 the commissioner may take an assignment of the wage claim in trust
5 for the assigning employee and may bring any legal action
6 necessary to collect the claim, and the employer shall be required to
7 pay to the employee the unpaid wages and liquidated damages equal
8 to 200 percent the amount of the unpaid wages and pay to the
9 commissioner the costs and **such** reasonable attorney's fees as
10 **may be allowed** determined by the court.

11 (cf: P.L.1966, c.113, s.26)

12

13 6. Section 1 of P.L.1967, c.216 (C.34:11-56a25.1) is amended
14 to read as follows:

15 1. No claim for unpaid minimum wages, unpaid overtime
16 compensation, or other damages under this act shall be valid with
17 respect to any such claim which has arisen more than **2** six years
18 prior to the commencement of an action for the recovery thereof. In
19 determining when an action is commenced, the action shall be
20 considered to be commenced on the date when a complaint is filed
21 with the Commissioner of the Department of Labor and **Industry**
22 Workforce Development or the Director of **the** Wage and Hour
23 **Bureau** Compliance, and notice of such complaint is served upon
24 the employer; or, where an audit by the Department of Labor and
25 **Industry** Workforce Development discloses a probable cause of
26 action for unpaid minimum wages, unpaid overtime compensation,
27 or other damages, and notice of such probable cause of action is
28 served upon the employer by the Director of **the** Wage and Hour
29 **Bureau** Compliance; or where a cause of action is commenced in
30 a court of appropriate jurisdiction.

31 (cf: P.L.1967, c.216, s.1)

32

33 7. R.S.34:11-57 is amended to read as follows:

34 34:11-57. As used in this article:

35 "Commissioner" means the Commissioner of Labor and
36 **Industry** Workforce Development or any person or persons in the
37 department designated in writing by him for the purposes of this
38 article.

39 "Community-based organization" means a public, or nonprofit
40 private, organization funded with public or private funds, or both,
41 that provides services to day laborers, migrant laborers, temporary
42 laborers, low wage workers, or any other type of employee.

43 "Department" means the Department of Labor and Workforce
44 Development.

45 "Employee" means any natural person who works for another for
46 hire.

1 "Employer" means any person, partnership, firm or corporation
2 employing another for hire.

3 "Legal services organization" means a public, or nonprofit
4 private, organization funded with public or private funds, or both,
5 that provides counseling or advice related to wage protection laws,
6 preparation of legal documents, or representation of any person
7 before a court or administrative agency.

8 "State wage and hour laws" means article 1 of chapter 11 of Title
9 34 of the Revised Statutes and all acts supplementing that article
10 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
11 act (C.34:11-56a et al.), and article 3 of chapter 11 of Title 34 of the
12 Revised Statutes (R.S.34:11-57 et seq.)

13 "Wages" means any moneys due an employee from the employer
14 whether payable by the hour, day, week, semimonthly, monthly or
15 yearly and shall include commissions, bonus, piecework
16 compensation and any other benefits arising out of an employment
17 contract.

18 (cf: P.L.1964, c.92, s.1)

19

20 8. R.S.34:11-58 is amended to read as follows:

21 34:11-58. a. An employee may file a claim for wages against an
22 employer under this section or any of the other State wage and
23 hours laws for wages owed related to work performed up to six
24 years prior to the date the claim for wages is filed.

25 b. An employer found to owe an employee wages shall pay the
26 employee the wages owed plus liquidated damages equal to 200%
27 of the wages owed, exclusive of any costs or fees.

28 c. The commissioner is authorized and empowered to
29 investigate any claim for wages due an employee and in such
30 investigation may summon the defendant, subpoena witnesses,
31 administer oaths, take testimony and shall upon such proceeding
32 make a decision or award [when the sum in controversy, exclusive
33 of costs, does not exceed \$30,000.00].

34 Such decision or award shall be a judgment when a certified
35 copy thereof is filed with the Superior Court.

36 Such judgment shall be entered in the same manner and have the
37 same effect and be subject to the same proceedings as are
38 judgments rendered in suits duly heard and determined by courts of
39 competent jurisdiction.

40 d. Upon an investigation of a wage claim initiated pursuant to
41 this section or any of the other State wage and hours laws, if an
42 employer fails to provide sufficient employee records, as required
43 to be kept under any State wage and hour laws, there shall be a
44 rebuttable presumption that the employee worked for the employer
45 for the period of time and for the amount of wages as alleged in the
46 wage claim.

47 e. The commissioner is authorized to supervise the payment of
48 amounts, including liquidated damages, due to employees under an

1 award made pursuant to this section, and the employer may be
2 required to make these payments to the commissioner to be held in
3 a special account in trust for the employees, and paid on order of
4 the commissioner directly to the employee or employees affected.
5 The employer shall also pay the commissioner an administrative fee
6 equal to not less than 10% or more than 25% of any payment made
7 to the commissioner pursuant to this section. The amount of the
8 administrative fee shall be specified in a schedule of fees to be
9 promulgated by rule or regulation of the commissioner in
10 accordance with the "Administrative Procedure Act," P.L.1968,
11 c.410 (C.52:14B-1 et seq.). The fee shall be applied to enforcement
12 and administration costs of the Division of Workplace Standards in
13 the Department of Labor and Workforce Development.

14 f. Upon issuing a decision, under this section or any of the
15 other State wage and hours laws, finding wages due to an employee
16 in an amount equal to or greater than \$5,000, the commissioner
17 shall:

18 (1) inform the employer of the commissioner's intention to
19 conduct an audit of the employer or any successor firm of the
20 employer pursuant to section 2 of P.L.2009, c.194 (C.34:1A-1.12);
21 and

22 (2) notify the Division of Taxation in the Department of the
23 Treasury of the decision and recommend that the division conduct
24 an audit of the employer to ensure the proper withholding and
25 payment of payroll and other taxes by the employer.

26 g. No payment of an amount of wages owed or related
27 damages, including wages or damages related to retaliation, shall be
28 required under the provision of this section, or under the provisions
29 of any of the other State wage and hour laws, which results in a
30 violation paying wages owed or damages more than one time for the
31 same violation.

32 (cf: P.L.2006, c.25, s.1)

33

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

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

46 (2) issue a stop work order against the violators requiring the
47 cessation of all business operations of the violator. The stop work
48 order may only be issued against the individual or entity found to be

1 in violation, and only as to the specific place of business or
2 employment for which the violation exists. The stop work order
3 shall be effective when served upon the violator or at a place of
4 business or employment by posting a copy of the stop work order in
5 a conspicuous location at the place of business or employment. The
6 stop work order shall remain in effect until the commissioner issues
7 an order releasing the stop work order upon a finding that the
8 violation has been corrected. As a condition of release of a stop-
9 work order under this section, the commissioner may require the
10 employer against whom the stop-work order had been issued to file
11 with the department periodic reports for a probationary period of
12 two years.

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

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

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

- 25 (1) perform similar work;
- 26 (2) occupy the same premises;
- 27 (3) have the same telephone or fax number;
- 28 (4) have the same email address or Internet website;
- 29 (5) perform work in the same geographical area;
- 30 (6) employ substantially the same work force;
- 31 (7) utilize the same tools and equipment;
- 32 (8) employ or engage the services of any person or persons
33 involved in the direction or control of the other; or
- 34 (9) list substantially the same work experience.

35
36 10. (New section) a. A client employer and a labor contractor
37 providing workers to the client employer shall be subject to joint
38 and several liability and shall share civil legal responsibility for any
39 violations of the provisions of State wage and hour laws or
40 violations of the provisions of section 10 of P.L.1999, c.90
41 (C.2C:40A-2) regarding compliance with State wage and hour laws,
42 including provisions regarding retaliatory actions against employees
43 for exercising their rights under any of those laws, and both may be
44 subject to any remedy provided for violations of those laws. A
45 client employer shall not shift to the labor contractor any legal
46 duties or liabilities under the provisions of the "Worker Health and
47 Safety Act," P.L.1965, c. 154 (C.34:6A-1 et seq.) or "The Worker
48 and Community Right to Know Act," P.L.1983, c. 315 (C. 34:5A-1

1 et seq.) with respect to workers supplied by the labor contractor. A
2 waiver of the provisions of this section is contrary to public policy,
3 and is void and unenforceable.

4 b. This section shall not be interpreted as:

5 (1) imposing individual liability on a homeowner for labor or
6 services received at the home or the owner of a home-based
7 business for labor or services received at the home; or

8 (2) restricting or limiting the rights of a client employer to
9 recover from a labor contractor any expense to the client employer,
10 or the rights of a labor contractor to recover from a client employer
11 any expense to the labor contractor, resulting from any violation by
12 the labor contractor or client employer of the provisions of State
13 wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40A-
14 2), or restricting or limiting the provisions in contracts between
15 client employers and labor contractors regarding the recovery of
16 expenses pursuant to this paragraph.

17 c. As used in this section:

18 “Client employer” means a business entity, regardless of its
19 form, that obtains or is provided workers, directly from a labor
20 contractor or indirectly from a subcontractor, to perform labor or
21 services within its usual course of business.

22 “Labor contractor” means any individual or entity that supplies,
23 either with or without a contract, directly or indirectly, a client
24 employer with workers to perform labor or services within the
25 client employer’s usual course of business, except that “labor
26 contractor” does not include a bona fide labor organization or
27 apprenticeship program, or a hiring hall operated pursuant to a
28 collective bargaining agreement.

29 “Usual course of business” means the regular and customary
30 work of a business, performed within or upon the premises or
31 worksite of the client employer, or any other place of business of
32 the client employer for which services or labor are performed.

33
34 11. (New section) Each employer shall provide each current
35 employee and each newly hired employee of the employer, a written
36 copy of the statement produced by the department pursuant to
37 subsection c. of section 12 of P.L. , c. (C.) (pending before
38 the Legislature as this bill) of the employee’s rights under the
39 provisions of State wage and hour laws and the provisions of
40 section 10 of P.L.1999, c.90 (C.2C:40A-2), with an explanation of
41 how to file a claim or take an action pursuant to those laws.

42
43 12. (New section) The department, for the purpose of supporting
44 the enforcement of the provisions of State wage and hour laws and
45 the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2), shall:

46 a. contract with community-based organizations and legal
47 services organizations to disseminate information to day laborers,
48 migrant laborers, temporary laborers, or any other type of employee

1 concerning the protections afforded by State wage and hour laws
2 and section 10 of P.L.1999, c.90 (C.2C:40A-2), and the process by
3 which an individual may take actions under those laws;

4 b. contract with community-based organizations and legal
5 services organizations to investigate, prepare, and if necessary,
6 represent employees in actions under State wage and hour laws or
7 section 10 of P.L.1999, c.90 (C.2C:40A-2), including actions under
8 those laws concerning retaliation against employees;

9 c. produce, and make available to the public on website of the
10 department, a statement of employee rights under the provisions of
11 State wage and hour laws and the provisions of section 10 of
12 P.L.1999, c.90 (C.2C:40A-2), with an explanation of how to file a
13 claim or take an action pursuant to those laws.

14 The contracts entered into between the department and
15 community-based organizations and legal services organizations
16 pursuant to this section shall require that the organizations make all
17 services accessible to persons with limited English proficiency and
18 shall provide that, in any case in which the community-based or
19 legal services organization assists or represents employees pursuant
20 to subsection b. of this section, 50 percent of any fees or penalties
21 collected by the department shall be paid to the organization for
22 services provided pursuant to contracts entered into pursuant to this
23 section, and that payment shall be regarded as an enforcement and
24 administrative cost of the Division of Workplace Standards of the
25 department.

26 The department, and any community-based organization or legal
27 services organization contracting with the department pursuant to
28 this section, shall provide any individual seeking assistance to file a
29 complaint or take an action regarding unpaid wages with a
30 description of all of the applicable remedies available to the
31 individual under State wage and hour laws and section 10 of
32 P.L.1999, c.90 (C.2C:40A-2), including the individual's right to
33 obtain liquidated damages, and that that right to damages is waived
34 if the individual agrees to accept payment of the unpaid wages
35 supervised by the commissioner.

36
37 13. (New section) a. The commissioner, in consultation with
38 the Administrative Director of the Courts and the Attorney General,
39 shall compile and prominently place on a website, maintained by
40 the department and available to the public, an annual report
41 evaluating the effectiveness and efficiency of the enforcement and
42 administration of wage claims and wage collections. The report
43 shall include, but not be limited to:

44 (1) the number of complaints, investigations, prosecutions,
45 dispositions, and business license suspensions and revocations, the
46 number and amount of penalties, the amount of wages recovered,
47 and the number of workers effected.

- 1 (2) an enumeration and description of all community-based and
2 legal services organizations contracted by the department to support
3 the enforcement.
- 4 (3) recommendations for strengthening the implementation and
5 enforcement of P.L. , c. (C.) (pending before the
6 Legislature as this bill).
- 7 b. The commissioner, in consultation with the Administrative
8 Director of the Courts and the Attorney General, shall compile and
9 prominently place on a website, maintained by the department and
10 available to the public, the following information regarding each
11 wage claim in which an employer was found to have been in
12 violation of one or more State wage and hour laws in a final
13 determination by the commissioner or a judgement of a court made
14 during the preceding period of not less than 12 months:
- 15 (1) the name and address of the employer;
- 16 (2) the nature of the claim, including whether it is a claim for
17 one or more of the following: unpaid wages; failure to pay the
18 minimum wage; failure to pay required overtime; or retaliation
19 against an employee in connection with State wage and hour laws;
- 20 (3) the number of affected employees, and the amount of wages
21 found owed; and
- 22 (4) any findings, penalties, and business license suspensions or
23 revocations that resulted from the wage claim.
- 24 The information on a claim shall be placed on the website not
25 more than 30 days after the final determination or judgement is
26 made.
- 27
- 28 14. This act shall take effect immediately.