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ASSEMBLY, No. 5840

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED NOVEMBER 14, 2019

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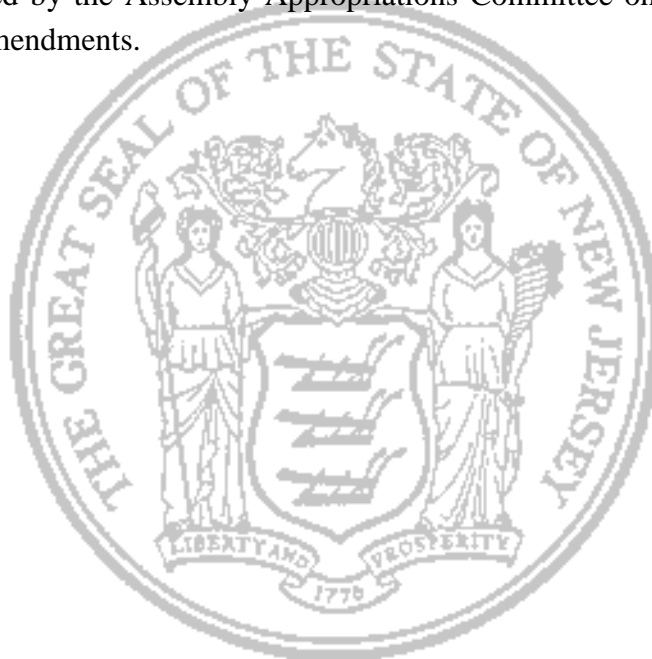
District 4 (Camden and Gloucester)

SYNOPSIS

Concerns joint liability for payment of employer tax law.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on December 12, 2019, with amendments.



(Sponsorship Updated As Of: 1/10/2020)

1 AN ACT concerning joint and several liability for the payment of
2 employer tax laws and amending R.S.34:11-57 and P.L.2019,
3 c.212.

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

7
8 1. R.S.34:11-57 is amended to read as follows:
9 34:11-57. As used in this article:

10 "Commissioner" means the Commissioner of Labor and
11 Workforce Development or any person or persons in the department
12 designated in writing by him for the purposes of this article.

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

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

19 "Employee" means any natural person who works for another for
20 hire.

21 "Employer" means any person, partnership, firm or corporation
22 employing another for hire.

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

28 "State employer tax laws" means the workers' compensation
29 law, R.S.34:15-1 et seq., the "unemployment compensation law,"
30 R.S.43:21-1 et seq., the "Temporary Disability Benefits Law,"
31 P.L.1948, c.110 (C.43:21-25 et al.), P.L.2008, c.17 (C.43:21-
32 39.1 et al.), and the "New Jersey Gross Income Tax Act,"
33 N.J.S.54A:1-1 et seq.

34 "State wage and hour laws" means article 1 of chapter 11 of Title
35 34 of the Revised Statutes and all acts supplementing that article
36 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
37 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),
38 and article 3 of chapter 11 of Title 34 of the Revised Statutes
39 (R.S.34:11-57 et seq.), but "State wage and hour laws" do not
40 include the "New Jersey Prevailing Wage Act," P.L.1963, c.150
41 (C.34:11-56.25 et seq.), or "The Public Works Contractor
42 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

43 "Wages" means any moneys due an employee from the employer
44 whether payable by the hour, day, week, semimonthly, monthly or
45 yearly and shall include commissions, bonus, piecework

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 ALA committee amendments adopted November 18, 2019.

²Assembly AAP committee amendments adopted December 12, 2019.

1 compensation and any other benefits arising out of an employment
2 contract.

3 (cf: P.L.2019, c.212, s.6)

4

5 ¹[2. Section 9 of P.L.2019, c.212 (C.34:11-58.2) is amended to
6 read as follows:

7 9. a. A client employer and a labor contractor providing
8 workers to the client employer shall be subject to joint and several
9 liability and shall share civil legal responsibility for any violations
10 of the provisions of State wage and hour laws or State employer tax
11 laws, or violations of the provisions of section 10 of P.L.1999, c.90
12 (C.2C:40A-2) regarding compliance with State wage and hour laws
13 or State employer tax laws, including provisions of those laws
14 regarding retaliatory actions against employees for exercising their
15 rights under any of those laws and provisions of those laws
16 regarding the misclassification of workers, and both the client
17 employer and the labor contractor may be subject to any remedy
18 provided for violations of those laws. A client employer shall not
19 shift to the labor contractor any legal duties or liabilities under the
20 provisions of the “Worker Health and Safety Act,” P.L.1965, c.154
21 (C.34:6A-1 et seq.) or “The Worker and Community Right to Know
22 Act,” P.L.1983, c.315 (C.34:5A-1 et seq.) with respect to workers
23 supplied by the labor contractor. A waiver of the provisions of this
24 section is contrary to public policy, and is void and unenforceable.

25 b. This section shall not be interpreted as:

26 (1) imposing individual liability on a homeowner for labor or
27 services received at the home or the owner of a home-based
28 business for labor or services received at the home; or

29 (2) restricting or limiting the rights of a client employer to
30 recover from a labor contractor any expense to the client employer,
31 or the rights of a labor contractor to recover from a client employer
32 any expense to the labor contractor, resulting from any violation by
33 the labor contractor or client employer of the provisions of State
34 wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40A-
35 2), or restricting or limiting the provisions in contracts between
36 client employers and labor contractors regarding the recovery of
37 expenses pursuant to this paragraph.

38 c. Any individual acting on behalf of an employer, including a
39 client employer or labor contractor, who violates any provision of
40 State wage and hour laws or State employer tax laws, or any
41 provision of section 10 of P.L.1999, c.90 (C.2C:40A-2) regarding
42 compliance with State wage and hour laws or State employer tax
43 laws, including any provision of those laws concerning the
44 misclassification of workers, may be held liable as the employer for
45 the violation. For the purposes of this section, “person acting on
46 behalf of an employer” includes an individual acting on behalf of an
47 employer who is an owner, director, officer, or manager of the
48 employer.

1 d. As used in this section:

2 "Labor contractor" means any individual or entity that supplies,
3 either with or without a contract, directly or indirectly, a client
4 employer with workers to perform labor or services within the
5 client employer's usual course of business, except that "labor
6 contractor" does not include a bona fide labor organization or
7 apprenticeship program, or a hiring hall operated pursuant to a
8 collective bargaining agreement.

9 "Usual course of business" means the regular and customary
10 work of a business, performed within or upon the premises or
11 worksite of the client employer, or any other place of business of
12 the client employer for which services or labor are performed.

13 (cf: P.L.2019, c.212, s.9)]¹

14

15 ¹2. Section 9 of P.L.2019, c.212 (C.34:11-58.2) is amended to
16 read as follows:

17 9. a. A client employer and a labor contractor providing
18 workers to the client employer shall be subject to joint and several
19 liability and shall share civil legal responsibility for any violations
20 of the provisions of State wage and hour laws or State employer tax
21 laws, or violations of the provisions of section 10 of P.L.1999, c.90
22 (C.2C:40A-2) regarding compliance with State wage and hour laws
23 or State employer tax laws, including provisions of those laws
24 regarding retaliatory actions against employees for exercising their
25 rights under any of those laws and provisions of those laws
26 regarding the misclassification of workers, and both the client
27 employer and the labor contractor may be subject to any remedy
28 provided for violations of those laws. A client employer shall not
29 shift to the labor contractor any legal duties or liabilities under the
30 provisions of the "Worker Health and Safety Act," P.L.1965, c.154
31 (C.34:6A-1 et seq.) or "The Worker and Community Right to Know
32 Act," P.L.1983, c.315 (C.34:5A-1 et seq.) with respect to workers
33 supplied by the labor contractor. A waiver of the provisions of this
34 section is contrary to public policy, and is void and unenforceable.

35 b. This section shall not be interpreted as:

36 (1) imposing individual liability on a homeowner for labor or
37 services received at the home or the owner of a home-based
38 business for labor or services received at the home; or

39 (2) restricting or limiting the rights of a client employer to
40 recover from a labor contractor any expense to the client employer,
41 or the rights of a labor contractor to recover from a client employer
42 any expense to the labor contractor, resulting from any violation by
43 the labor contractor or client employer of the provisions of State
44 wage and hour laws or State employer tax laws, or of section 10 of
45 P.L.1999, c.90 (C.2C:40A-2), or restricting or limiting the
46 provisions in contracts between client employers and labor
47 contractors regarding the recovery of expenses pursuant to this
48 paragraph.

1 c. Any person acting on behalf of an employer, including a
2 client employer or labor contractor, who violates any provision of
3 State wage and hour laws or State employer tax laws, or any
4 provision of section 10 of P.L.1999, c.90 (C.2C:40A-2) regarding
5 compliance with State wage and hour laws or State employer tax
6 laws, including any provision of those laws concerning the
7 misclassification of workers, may be held liable as the employer for
8 the violation. For the purposes of this section, “person acting on
9 behalf of an employer” includes an individual acting on behalf of an
10 employer who is an owner, director, officer, or manager of the
11 employer.

12 d. As used in this section:

13 "Client employer" means a business entity, regardless of its
14 form, that obtains or is provided workers, directly from a labor
15 contractor or indirectly from a subcontractor, to perform labor or
16 services within its usual course of business², but does not include a
17 “contractor” as defined in section 3 of P.L.1999, c.238 (C.34:11-
18 56.50)².

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

26 "Usual course of business" means the regular and customary
27 work of a business, performed within or upon the premises or
28 worksite of the client employer, or any other place of business of
29 the client employer for which services or labor are performed.¹

30 (cf: P.L.2019, c.212, s.9)

31

32 3. This act shall take effect immediately.