

CHAPTER 372

AN ACT concerning the issuing of stop-work orders and supplementing Title 34 of the Revised Statutes.

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

C.34:1A-1.17 Entrance into place of business, employment; stop-work order.

1. a. The Commissioner of Labor and Workforce Development and any agent of the commissioner, upon receipt of a complaint or through routine investigation for a violation of any State wage, benefit and tax law, including a violation of R.S.34:15-79, or a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-14, is authorized to enter, during usual business hours, the place of business or employment of any employer of the individual to determine compliance with those laws, and for that purpose may examine payroll and other records and interview employees, call hearings, administer oaths, take testimony under oath and take depositions.

b. The commissioner may issue subpoenas for the attendance of witnesses and the production of books and records. Any employer or agent of the employer who willfully fails to furnish time and wage records as required by law to the commissioner or agent of the commissioner upon request, or who refuses to admit the commissioner or agent to the place of employment of the employer, or who hinders or delays the commissioner or agent in the performance of duties in the enforcement of this section, may be fined not less than \$1,000 and shall be guilty of a disorderly persons offense. Each day of the failure to furnish the records to the commissioner or agent shall constitute a separate offense, and each day of refusal to admit, of hindering, or of delaying the commissioner or agent shall constitute a separate offense.

c. (1) If the commissioner determines, after either an initial determination as a result of an audit of a business or an investigation pursuant to subsection a. of this section, that an employer is in violation of any State wage, benefit and tax law, including a violation of R.S.34:15-79, or a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-14, the commissioner may issue a stop-work order against the employer requiring cessation of all business operations of the employer at the specific place of business or employment in which the violation exists. The stop-work order may be issued only against the employer found to be in violation or non-compliance. The commissioner shall serve a notification of intent to issue a stop-work order on the employer at the place of business or, for a particular employer worksite, at that worksite at least seven days prior to the issuance of a stop-work order. The order shall be effective when served upon the employer at the place of business or, for a particular employer worksite, when served at that worksite. The order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has come into compliance and has paid any penalty deemed to be satisfactory to the commissioner, or after the commissioner determines, in a hearing held pursuant to paragraph (2) of this subsection, that the employer did not commit the act on which the order was based. The stop-work order shall be effective against any successor entity engaged in the same or equivalent trade or activity that has one or more of the same principals or officers as the corporation, partnership or sole proprietorship against which the stop-work order was issued. The commissioner may assess a civil penalty of \$5,000 per day against an employer for each day that it conducts business operations that are in violation of the stop-work order.

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

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

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

d. For purposes of this section:

"Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State. For the purposes of this subsection the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.

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

"Employ" means to suffer or permit to work.

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

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

2. This act shall take effect immediately.

Approved January 20, 2020.