

CHAPTER 373

AN ACT concerning penalties for violations of State wage, benefit and tax laws in connection with the misclassification of employees 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-1.18 Violations concerning misclassification of employees; penalties.

1. a. If the Commissioner of Labor and Workforce Development finds that a violation of a State wage, benefit and tax law has occurred and that the violation was in connection with failing to properly classify employees, the commissioner is, in addition to imposing any other remedies or penalties authorized by law, authorized to assess and collect:

(1) an administrative "misclassification penalty" up to a maximum of \$250 per misclassified employee for a first violation and up to a maximum of \$1,000 per misclassified employee for each subsequent violation; and

(2) a penalty to be provided for the misclassified worker of not more than 5 percent of the worker's gross earnings over the past twelve months from the employer who failed to properly classify them. The employer may be required to make these penalty payments to the commissioner to be held in a special account in trust for the worker or workers, or paid on order of the commissioner directly to the workers or workers affected.

When determining the amount of the administrative "misclassification penalty" imposed pursuant to paragraph (1) of this subsection, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative "misclassification penalty" shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of penalty, and provides the alleged violator an opportunity to request a hearing before the commissioner or his or her designee.

b. For violations of any State wage, benefit or tax law, other than the State unemployment and disability benefits laws, which occur in connection with the misclassification of one or more employees, the alleged violator may request a hearing within 15 days following receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that the violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. For violations subject to this subsection b., payment of the administrative "misclassification penalty" shall be due when the final order is issued or when the notice becomes the final order.

c. For violations of the State unemployment and disability benefits laws in connection with the misclassification of one or more employees, the alleged violator may request a hearing in the manner and within the time prescribed by those laws, and payment of the administrative "misclassification penalty" shall be due when assessment for contributions, penalties and interest are due pursuant to subsection (d) of R.S.43:21-14 or section 31 of P.L.1948, c.110 (C.43:21-55).

d. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the Commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

e. Any sum collected as an administrative "misclassification penalty" pursuant to paragraph (1) of subsection a. shall be applied toward enforcement and administration costs of the division within the Department of Labor and Workforce Development responsible for enforcement of the law violated by the employer. Nothing in this section shall prevent the commissioner from assessing interest, penalties, or other fees allowable by law.

f. For purposes of this section, “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), and “State unemployment and disability benefits laws” mean the "unemployment compensation law," R.S.43:21-1 et seq., and the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

2. This act shall take effect immediately.

Approved January 20, 2020.