

ASSEMBLY, No. 3303

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

Concerns payment of independent contractors.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/11/2020)

1 **AN ACT** concerning the payment of independent contractors and
2 supplementing chapter 11 of Title 34 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 “Client” means a sole proprietorship, partnership, corporation,
9 limited liability company, association or other business entity or a
10 nonprofit organization contracting with an independent contractor
11 in any occupation, industry, trade, business or service for
12 remuneration equal to or greater than \$600. The term “client” does
13 not include a person or any governmental entity, or a general acute
14 care facility licensed by the Commissioner of Health and Senior
15 Services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), including
16 rehabilitation, psychiatric, and long-term acute facilities.

17 “Commissioner” means the Commissioner of Labor and
18 Workforce Development.

19 “Independent Contractor” means an individual who has
20 performed services for remuneration, where the services are not
21 regarded as employment for the purposes of the "unemployment
22 compensation law," R.S.43:21-1 et seq., because the services meet
23 the criteria set forth in R.S.43:21-19(i)(6)(A), (B), and (C), except
24 that the following individuals and their clients shall not be subject
25 to any provisions of sections 2 and 3 of this act (now pending
26 before the Legislature as this bill, P.L. , c. (C.)) regarding the
27 recovery of remuneration by independent contractors, including any
28 provisions of those sections regarding the recovery of liquidated
29 damages:

30 a. an individual who is a licensed medical professional;

31 b. an individual engaged in the practice of law pursuant to the
32 contract at issue and who is a member in good standing of the bar of
33 the highest court of any state, possession, territory, commonwealth,
34 or the District of Columbia and who is not under any order of any
35 court suspending, enjoining, restraining, disbaring or otherwise
36 restricting the individual in the practice of law;

37 c. an individual who is licensed by the New Jersey Real Estate
38 Commission pursuant to R.S.45:15-1 et seq.;

39 d. an individual who contracts to solicit orders in New Jersey
40 as the sales representative of a principal; or

41 e. an individual subject to a collective bargaining agreement
42 that specifies wages, terms and conditions of employment.

43 “Remuneration” means all compensation for personal services,
44 including commissions and bonuses and the cash value of all
45 compensation in any medium other than cash.

46
47 2. a. An independent contractor shall be paid the remuneration
48 earned in accordance with agreed work terms. The contract

1 between the independent contractor and client shall be reduced to
2 writing, and signed by the client and the independent contractor.
3 Signed copies of the contract shall be provided to the client and the
4 independent contractor and be kept on file by the client for a period
5 of not less than six years, and made available by the client to the
6 commissioner upon request. The written contract shall include the
7 name and mailing address of both the client and the independent
8 contractor, an itemization of all services to be provided by the
9 independent contractor, including clearly defined performance
10 metrics to which the client intends to hold the independent
11 contractor, a description of how remuneration that is earned and
12 payable shall be calculated, and the date on which the client shall
13 pay the contracted remuneration or the mechanism by which that
14 date will be calculated.

15 b. The contracted remuneration shall be paid to the independent
16 contractor either on or before the date the remuneration is due under
17 the contract, or if the contract does not specify the date or the
18 mechanism by which the date will be determined, the independent
19 contractor shall be paid the remuneration earned not later than 30
20 days after the completion of the independent contractor's services
21 under the contract. Once the independent contractor has
22 commenced performance of the services under the contract, the
23 client shall not require as a condition of timely payment that the
24 independent contractor accept less remuneration than the amount of
25 the contracted remuneration.

26 c. No client shall threaten, intimidate, discipline, harass, deny a
27 work opportunity to or discriminate against an independent
28 contractor, or take any other action that penalizes independent
29 contractor for, or is reasonably likely to deter an independent
30 contractor from, exercising or attempting to exercise any right
31 provided under this act, or from obtaining a future work opportunity
32 because the independent contractor has done so.

33

34 3. Any individual who believes himself or herself to be an
35 independent contractor may file with the commissioner a complaint
36 regarding a violation of the provisions of subsections a. or b.
37 section 2 of this act. Such a complaint shall be filed as a claim for
38 wages and, if the commissioner determines that the individual is an
39 independent contractor, shall be investigated by the commissioner
40 under article 3 of chapter 11 of Title 34 of the Revised Statutes
41 (C.34:11-57 et seq.). If the commissioner determines that the
42 individual is not an independent contractor, the services performed
43 for remuneration shall be deemed employment and shall be subject
44 to P.L.1965, c.173 (C.34:11-4.1 et seq.) and P.L.1966, c.113
45 (C.34:11-56a et seq.).

46 The determination by the commissioner as to the employment
47 status of the worker as either an employee or an independent
48 contractor shall not be governed by the written contract required

1 under section 2 of this act. Rather, the determination by the
2 commissioner as to the employment status of the worker as either
3 an employee or an independent contractor shall be governed by the
4 facts of the relationship between the employer or client and the
5 worker. The written contract required under section 2 of this act
6 may be a factor considered by the commissioner in making a
7 determination regarding employment status, but shall not be
8 dispositive.

9 The commissioner may award back remuneration to an
10 independent contractor and, for second and subsequent violations of
11 this act, the commissioner may assess against the client an
12 additional amount as liquidated damages. Liquidated damages shall
13 be calculated by the commissioner as no more than 100 percent of
14 the total amount of the underlying contract.

15 The powers of the commissioner and procedural rights of
16 claimants under article 3 of chapter 11 of Title 34 of the Revised
17 Statutes (C.34:11-57 et seq.), shall apply to all claims filed under
18 this act by independent contractors with the commissioner for
19 remuneration as if the complaint for remuneration were a claim for
20 wages.

21 Failure of a client to keep adequate records shall not constitute a
22 bar to the filing of a complaint by an independent contractor. The
23 failure of a client to provide the written work terms, upon request of
24 the commissioner, shall give rise to a presumption that the terms
25 that the independent contractor has presented are the agreed work
26 terms.

27
28 4. Any client who does not pay the remuneration of its
29 independent contractors in accordance with the provisions of this
30 act, and the officers, agents, or representatives of any client who
31 knowingly permit the client to violate the provisions of this act by
32 failing to pay the remuneration of any of its independent contractors
33 in accordance with the provisions of this act, shall be guilty of a
34 disorderly persons offense for the first offense, and in the event that
35 any second or subsequent offense occurs within six years of the date
36 of conviction for a prior offense, shall be guilty of a crime of the
37 fourth degree for each offense.

38
39 5. a. Except as otherwise provided by law, an independent
40 contractor alleging a violation of a provision of this act may bring
41 an action in any court of competent jurisdiction for damages as
42 described in subsection b. of this section.

43 (1) Any action alleging a violation of subsection a. of section 2
44 of this act shall be brought within two years after the acts alleged to
45 have violated this act occurred.

46 (2) Any action alleging a violation of subsections b. or c. of
47 section 2 of this act shall be brought within six years after the acts
48 alleged to have violated this act occurred.

1 (3) A plaintiff who solely alleges a violation of subsection a. of
2 section 2 of this act shall prove that the plaintiff requested a written
3 contract prior to commencing the performance of any contracted
4 services.

5 b. A plaintiff who prevails on a claim alleging a violation of
6 this act shall be awarded damages as described in this subsection
7 and an award of reasonable attorney's fees and court costs.

8 (1) A plaintiff who prevails on a claim alleging a violation of
9 subsection a. of section 2 of this act shall be awarded damages of
10 \$250.

11 (2) A plaintiff who prevails on a claim alleging a violation of
12 subsection a. of section 2 of this act and on one or more claims
13 under other provisions of this act shall be awarded damages equal to
14 the value of the underlying contract for the violation of subsection
15 a. of section 2 in addition to the remedies specified in this
16 subsection for the other violations.

17 (3) In addition to any other damages awarded pursuant to this
18 subsection, a plaintiff who prevails on a claim alleging a violation
19 of subsection b. of section 2 of this act is entitled to an award of
20 double damages, injunctive relief and any other remedies deemed
21 appropriate by the court.

22 (4) In addition to any other damages awarded pursuant to this
23 subsection, a plaintiff who prevails on a claim alleging a violation
24 of subsection c. of section 2 of this act is entitled to damages equal
25 to the value of the underlying contract for each violation arising
26 under subsection c. of section 2 of this act.

27 c. The remedies provided by this section and the remedies
28 provided by any other provision of this act may be enforced
29 simultaneously or consecutively so far as not inconsistent with each
30 other.

31

32 6. a. The commissioner shall establish a navigation program
33 that provides information and assistance, as set forth in subsection
34 c. of this section, relating to the provisions of this act. The program
35 shall include assistance by a natural person by phone and electronic
36 mail and shall also include information accessible via an Internet
37 website maintained by the Department of Labor and Workforce
38 Development.

39 b. The navigation program shall provide relevant information,
40 as determined by the commissioner, related to the submission of a
41 complaint by an independent contractor to the commissioner under
42 section 3 of this act and links to the Internet website of the
43 Administrative Office of the Courts regarding the commencement
44 of a civil action under the provisions of this act.

45

46 7. This act shall take effect immediately.

STATEMENT

This bill requires that independent contractors be paid the remuneration earned in accordance with a signed, written contract between the independent contractor and client which is kept on file for not less than six years, and made available to the Commissioner of Labor and Workforce Development upon request. The bill requires the contract to itemize all services provided by the contractor, and include performance metrics and a description of how remuneration is calculated and when it is paid.

The bill requires the remuneration under the contract be paid at the time indicated in the contract, or, if the contract does not address the time of payment, not later than 30 days after the completion of the work. Once the contractor commences performance of the services, the client may not require as a condition of timely payment that the contractor accept less than the agreed upon remuneration.

A client is prohibited from taking adverse actions against a contractor for exercising or attempting to exercise any right provided by the bill.

The bill permits any individual who believes himself or herself to be an independent contractor to file with the commissioner a complaint regarding a violation of the provisions of the bill. The complaint would be filed as a claim for wages and, if the commissioner determines that the individual is an independent contractor, be investigated by the commissioner under article 3 of chapter 11 of Title 34 of the Revised Statutes (C.34:11-57 et seq.). If the commissioner determines that the individual is not an independent contractor, the services performed shall be deemed employment and be subject to P.L.1965, c.173 (C.34:11-4.1 et seq.) and P.L.1966, c.113 (C.34:11-56a et seq.).

The determination by the commissioner as to the employment status of the worker as either an employee or an independent contractor shall not be governed by the written contract required the bill, but instead by the facts of the relationship between the employer or client and the worker. The written contract may be a factor considered in making the determination, but shall not be dispositive.

The commissioner may award back remuneration to an independent contractor and, for second and subsequent violations of this act, the commissioner may assess against the client an additional amount as liquidated damages not more than 100 percent of the total amount of the underlying contract.

Failure of a client to keep adequate records is not a bar to filing of a complaint by an independent contractor. The failure of a client to provide record upon request of the commissioner shall give rise to a presumption that the terms that the independent contractor has presented are the agreed work terms.

1 A client who fails to pay the remuneration required by the bill, or
2 an agent of the client who knowingly permits the client to fail to
3 pay the remuneration is, for a first offense, guilty of a disorderly
4 persons offense and, for a second or subsequent offense occurring
5 within six years of a prior conviction, guilty of a crime of the fourth
6 degree.

7 The bill permits an independent contractor to bring an action in
8 any court of competent jurisdiction for specified damages along
9 with and an award of reasonable attorney's fees and court costs.

10 The bill defines "client" as a business entity or a nonprofit
11 organization contracting with a independent contractor for
12 compensation equal to or greater than \$600, but not a person,
13 governmental entity, or general acute care facility licensed by the
14 Commissioner of Health and Senior Services.

15 The bill defines "independent contractor" as an individual who
16 performs services for remuneration, if the services are not regarded
17 as employment for the purposes of the "unemployment
18 compensation law" because the services meet the criteria set forth in
19 R.S.43:21-19(i)(6)(A), (B), and (C), except that the following
20 individuals and their clients shall not be subject to the provisions of
21 the bill:

- 22 1. a licensed medical professional;
- 23 2. an individual engaged in the practice of law under the
24 contract;
- 25 3. an individual licensed by the New Jersey Real Estate
26 Commission;
- 27 4. an individual who contracts to solicit orders in New Jersey
28 as the sales representative of a principal; or
- 29 5. an individual subject to a collective bargaining agreement.