

ASSEMBLY, No. 4879

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED OCTOBER 26, 2020

Sponsored by:

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

SYNOPSIS

Increases penalties for failure to report employee wages.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning penalties for failure to report employee wages
2 and amending R.S.43:21-14.

3

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

6

7 1. R.S.43:21-14 is amended to read as follows:

8 43:21-14. (a) (1) In addition to such reports as may be required
9 under the provisions of subsection (g) of R.S.43:21-11, every
10 employer shall file with the controller periodic contribution reports
11 on such forms and at such times as the controller shall prescribe, to
12 disclose the employer's liability for contributions under the
13 provisions of this chapter (R.S.43:21-1 et seq.), and at the time of
14 filing each contribution report shall pay the contributions required
15 by this chapter (R.S.43:21-1 et seq.), for the period covered by such
16 report. The controller may require that such reports shall be under
17 oath of the employer. Any employer who shall fail to file any
18 report, required by the controller, on or before the last day for the
19 filing thereof shall pay a penalty of \$10.00 for each day of
20 delinquency until and including the fifth day following such last
21 day and for any period of delinquency after such fifth day, a penalty
22 of \$10.00 a day or 25% of the amount of the contributions due and
23 payable by the employer for the period covered by the report,
24 whichever is the lesser; if there be no liability for contributions for
25 the period covered by any contribution report or in the case of any
26 report other than a contribution report, the employer or employing
27 unit shall pay a penalty of \$10.00 a day for each day of delinquency
28 in filing or \$50.00, whichever is the lesser; provided, however, that
29 when it is shown to the satisfaction of the controller that the failure
30 to file any such report was not the result of fraud or an intentional
31 disregard of this chapter (R.S.43:21-1 et seq.), or the regulations
32 promulgated hereunder, the controller, in his discretion, may remit
33 or abate any unpaid penalties heretofore or hereafter imposed under
34 this section. On or before October 1 of each year, the controller
35 shall submit to the Commissioner of Labor and Workforce
36 Development a report covering the 12-month period ending on the
37 preceding June 30, and showing the names and addresses of all
38 employers for whom the controller remitted or abated any penalties,
39 or ratified any remission or abatement of penalties, and the amount
40 of such penalties with respect to each employer. Any employer who
41 shall fail to pay the contributions due for any period, on or before
42 the date they are required by the controller to be paid, shall pay
43 interest on the amount thereof from such date until the date of
44 payment thereof, at the rate of 1% a month through June 30, 1981
45 and at the rate of 1 1/4% a month after June 30, 1981. Upon the

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 written request of any employer or employing unit, filed with the
2 controller on or before the due date of any report or contribution
3 payment, the controller, for good cause shown, may grant, in
4 writing, an extension of time for the filing of such report or the
5 paying of such contribution, with interest at the applicable rate;
6 provided no such extension shall exceed 30 days and that no such
7 extension shall postpone payment of any contribution for any period
8 beyond the day preceding the last day for filing tax returns under
9 Title IX of the federal Social Security Act for the year in which said
10 period occurs.

11 (2) (A) For the calendar quarter commencing July 1, 1984 and
12 each successive quarter thereafter, each employer shall file a report
13 with the controller within 30 days after the end of each quarter in a
14 form and manner prescribed by the controller, listing the name,
15 social security number and wages paid to each employee and the
16 number of base weeks (as defined in subsection (t) of R.S.43:21-19)
17 worked by the employee during the calendar quarter.

18 (B) Any employer who fails without reasonable cause to comply
19 with the reporting requirements of this paragraph (2) shall be liable
20 for a penalty in the following amount for each employee with
21 respect to whom the employer is required to file a report but who is
22 not included in the report or for whom the required information is
23 not accurately reported for each employee required to be included,
24 whether or not the employee is included:

25 (i) For the first failure for one quarter in any eight consecutive
26 quarters, [~~\$5.00~~] \$25 for each employee;

27 (ii) For the second failure for any quarter in any eight
28 consecutive quarters, [~~\$10.00~~] \$50 for each employee; and

29 (iii) For the third failure for any quarter in any eight consecutive
30 quarters, and for any failure in any eight consecutive quarters,
31 which failure is subsequent to the third failure, [~~\$25.00~~] \$100 for
32 each employee.

33 (C) Information reported by employers as requested by this
34 paragraph (2) shall be used by the Department of Labor and
35 Workforce Development for the purpose of determining eligibility
36 for benefits of individuals in accordance with the provisions of
37 R.S.43:21-1 et seq. Notwithstanding the provisions of subsection
38 (g) of R.S.43:21-11, the Department of Labor and Workforce
39 Development is hereby authorized to provide the Department of
40 Human Services and the Higher Education Student Assistance
41 Authority with information reported by employers as required by
42 this paragraph (2). For each fiscal year, the Director of the Division
43 of Budget and Accounting of the Department of the Treasury shall
44 charge the appropriate account of the Department of Human
45 Services and the Higher Education Student Assistance Authority in
46 amounts sufficient to reimburse the Department of Labor and
47 Workforce Development for the cost of providing information
48 under this subparagraph (C).

1 (D) (Deleted by amendment, P.L.2015, c.135)

2 (b) The contributions, penalties, and interest due from any
3 employer under the provisions of this chapter (R.S.43:21-1 et seq.),
4 from the time they shall be due, shall be a personal debt of the
5 employer to the State of New Jersey, recoverable in any court of
6 competent jurisdiction in a civil action in the name of the State of
7 New Jersey; provided, however, that except in the event of fraud,
8 no employer shall be liable for contributions or penalties unless
9 contribution reports have been filed or assessments have been made
10 in accordance with subsection (c) or (d) of this section before four
11 years have elapsed from the last day of the calendar year with
12 respect to which any contributions become payable under this
13 chapter (R.S.43:21-1 et seq.), nor shall any employer be required to
14 pay interest on any such contribution unless contribution reports
15 were filed or assessments made within such four-year period;
16 provided further that if such contribution reports were filed or
17 assessments made within the four-year period, no civil action shall
18 be instituted, nor shall any certificate be issued to the Clerk of the
19 Superior Court under subsection (e) of this section, except in the
20 event of fraud, after six years have elapsed from the last day of the
21 calendar year with respect to which any contributions become
22 payable under this chapter (R.S.43:21-1 et seq.), or July 1, 1958,
23 whichever is later. Payments received from an employer on account
24 of any debt incurred under the provisions of this chapter
25 (R.S.43:21-1 et seq.) may be applied by the controller on account of
26 the contribution liability of the employer and then to interest and
27 penalties, and any balance remaining shall be recoverable by the
28 controller from the employer. Upon application therefor, the
29 controller shall furnish interested persons and entities certificates of
30 indebtedness covering employers, employing units and others for
31 contributions, penalties and interest, for each of which certificates
32 the controller shall charge and collect a fee of \$2.00 per name; no
33 such certificate to be issued, however, for a fee of less than \$10.00.
34 All fees so collected shall be paid into the unemployment
35 compensation administration fund.

36 (c) If any employer shall fail to make any report as required by
37 the rules and regulations of the division pursuant to the provisions
38 of this chapter (R.S.43:21-1 et seq.), the controller may make an
39 estimate of the liability of such employer from any information it
40 may obtain, and, according to such estimate so made, assess such
41 employer for the contributions, penalties, and interest due the State
42 from him, give notice of such assessment to the employer, and
43 make demand upon him for payment.

44 (d) After a report is filed under the provisions of this chapter
45 (R.S.43:21-1 et seq.) and the rules and regulations thereof, the
46 controller shall cause the report to be examined and shall make such
47 further audit and investigation as it may deem necessary, and if
48 therefrom there shall be determined that there is a deficiency with

1 respect to the payment of the contributions due from such employer,
2 the controller shall assess the additional contributions, penalties,
3 and interest due the State from such employer, give notice of such
4 assessment to the employer, and make demand upon him for
5 payment.

6 (e) As an additional remedy, the controller may issue to the
7 Clerk of the Superior Court of New Jersey a certificate stating the
8 amount of the employer's indebtedness under this chapter
9 (R.S.43:21-1 et seq.) and describing the liability, and thereupon the
10 clerk shall immediately enter upon his record of docketed
11 judgments such certificate or an abstract thereof and duly index the
12 same. Any such certificate or abstract, heretofore or hereafter
13 docketed, from the time of docketing shall have the same force and
14 effect as a judgment obtained in the Superior Court of New Jersey,
15 and the controller shall have all the remedies and may take all the
16 proceedings for the collection thereof which may be had or taken
17 upon the recovery of such a judgment in a civil action upon contract
18 in said court. Such debt, from the time of docketing thereof, shall be
19 a lien on and bind the lands, tenements and hereditaments of the
20 debtor.

21 The Clerk of the Superior Court shall be entitled to receive for
22 docketing such certificate, \$0.50, and for a certified transcript of
23 such docket, \$0.50. If the amount set forth in said certificate as a
24 debt shall be modified or reversed upon review, as hereinafter
25 provided, the Clerk of the Superior Court shall, when an order of
26 modification or reversal is filed, enter in the margin of the docket
27 opposite the entry of the judgment, the word "modified" or
28 "reversed," as the case may be, and the date of such modification or
29 reversal.

30 The employer, or any other party having an interest in the
31 property upon which the debt is a lien, may deposit the amount
32 claimed in the certificate with the Clerk of the Superior Court of
33 New Jersey, together with an additional 10% of the amount thereof,
34 or \$100.00, whichever amount is the greater, to cover interest and
35 the costs of court, or in lieu of depositing the amount in cash, may
36 give a bond to the State of New Jersey in double the amount
37 claimed in the certificate, and file the same with the Clerk of the
38 Superior Court. Said bond shall have such surety and shall be
39 approved in the manner required by the Rules Governing the Courts
40 of the State of New Jersey.

41 After the deposit of said money or the filing of said bond, the
42 employer, or any other party having an interest in the said property,
43 may, after exhausting all administrative remedies, secure judicial
44 review of the legality or validity of the indebtedness or the amount
45 thereof, and the said deposit of cash shall be as security for, and the
46 bond shall be conditioned to prosecute, the judicial review with
47 effect.

1 Upon the deposit of said money or the filing of the said bond
2 with the Clerk of the Superior Court, all proceedings on such
3 judgment shall be stayed until the final determination of the cause,
4 and the moneys so deposited shall be subject to the lien of the
5 indebtedness and costs and interest thereon, and the lands,
6 tenements, and hereditaments of said debtor shall forthwith be
7 discharged from the lien of the State of New Jersey and no
8 execution shall issue against the same by virtue of said judgment.

9 Notwithstanding the provisions of subsections (a) through (c) of
10 this section, the Department of Labor and Workforce Development
11 may, with the concurrence of the State Treasurer, when all
12 reasonable efforts to collect amounts owed have been exhausted, or
13 to avoid litigation, reduce any liability for contributions, penalties
14 and interest, provided no portion of those amounts represents
15 contributions made by an employee pursuant to subsection (d) of
16 R.S.43:21-7.

17 (f) If, not later than two years after the calendar year in which
18 any moneys were erroneously paid to or collected by the controller,
19 whether such payments were voluntarily or involuntarily made or
20 made under mistake of law or of fact, an employer, employing unit,
21 or employee who has paid such moneys shall make application for
22 an adjustment thereof, the said moneys shall, upon order of the
23 controller, be either credited or refunded, without interest, from the
24 appropriate fund. For like cause and within the same period, credit
25 or refund may be so made on the initiative of the controller.

26 (g) All interest and penalties collected pursuant to this section
27 shall be paid into a special fund to be known as the unemployment
28 compensation auxiliary fund; all moneys in this special fund shall
29 be deposited, administered and disbursed in the same manner and
30 under the same conditions and requirements as is provided by law
31 for other special funds in the State Treasury, and shall be expended,
32 under legislative appropriation, for the purpose of aiding in
33 defraying the cost of the administration of this chapter (R.S.43:21-1
34 et seq.); for the repayment of any interest bearing advances made
35 from the federal unemployment account pursuant to the provisions
36 of section 1202(b) of the Social Security Act, 42 U.S.C. s.1322; and
37 for essential and necessary expenditures in connection with
38 programs designed to stimulate employment, as determined by the
39 Commissioner of Labor and Workforce Development, except that
40 any moneys in this special fund shall be first applied to aiding in the
41 defraying of necessary costs of the administration of this chapter
42 (R.S.43:21-1 et seq.) as determined by the Commissioner of Labor
43 and Workforce Development. The Treasurer of the State shall be ex
44 officio the treasurer and custodian of this special fund and, subject
45 to legislative appropriation, shall administer the fund in accordance
46 with the directions of the controller. Any balances in this fund shall
47 not lapse at any time, but shall be continuously available, subject to
48 legislative appropriation, to the controller for expenditure. The

1 State Treasurer shall give a separate and additional bond
2 conditioned upon the faithful performance of his duties in
3 connection with the unemployment compensation auxiliary fund, in
4 an amount to be fixed by the division, the premiums for such bond
5 to be paid from the moneys in the said special fund.

6 (h) All disputes under R.S.43:21-1 et seq. unless specifically
7 indicated otherwise, shall be resolved in accordance with the
8 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
9 seq.).

10 (i) Notwithstanding any of the provisions of this section, or any
11 other law, to the contrary, all functions, powers and duties of the
12 controller and the Commissioner of Labor and Workforce
13 Development relating to receiving reports, receiving billings,
14 receiving correspondence, remittance processing, data entry and
15 imaging required pursuant to this section shall be performed by the
16 Division of Revenue in the Department of the Treasury.

17 (cf: P.L.2015, c.135, s.1)

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19 2. This act shall take effect immediately.

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STATEMENT

23

24 This bill increases the penalties for failure to report employee
25 wages. Under existing law, employers are required to file a report
26 with the Department of Labor and Workforce Development after the
27 end of each quarter listing the wages paid to each employee and the
28 number of base weeks worked by the employee during the calendar
29 quarter. Any employer who fails to file this report is liable for a
30 penalty for each employee for whom the report is not filed.

31 Under the bill, the first failure for one quarter in any eight
32 consecutive quarters carries a fine of \$25 for each employee; the
33 second failure for any quarter in any eight consecutive quarters
34 carries a fine of \$50 for each employee; and the third failure, and
35 each subsequent failure, for any quarter in any eight consecutive
36 quarters carries a fine of \$100 for each employee.