ASSEMBLY, No. 3610

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED MARCH 17, 2022

Sponsored by:
Assemblyman PARKER SPACE
District 24 (Morris, Sussex and Warren)

SYNOPSIS

"New Jersey Jobs Protection Act"; requires verification of employment.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning the employment of unauthorized aliens, designated as the "New Jersey Jobs Protection Act" and supplementing Title 34 of the Revised Statutes.

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

1. This act shall be known and may be cited as the "New Jersey Jobs Protection Act."

2. The Legislature finds and declares that:

a. The State of New Jersey's economy is currently in recession, resulting in a large number of lost jobs and lost job opportunities for State residents;

b. The current loss of jobs and job opportunities in New Jersey is part of a larger trend of private sector job loss in the State in recent years;

c. The loss of jobs and job opportunities has resulted in an ever increasing number of unemployment benefit claims being filed by New Jersey residents;

d. The ever increasing number of individuals collecting unemployment compensation benefits is rapidly depleting the State's unemployment compensation fund;

e. The State's unemployment compensation fund is funded through a tax on employers and employees of the State and if the reserve of the fund falls below a certain level, it triggers a tax increase to New Jersey businesses, which are already under considerable financial pressure;

f. The State has a fiscal and moral responsibility to implement public policies that foster economic growth and full employment for all legal residents of the State;

g. In November, 2008, an estimated 275,100 persons were unemployed in New Jersey;

h. In 2007, an estimated 470,000 citizens of foreign nations were living in New Jersey in violation of federal immigration laws; these individuals are known as unauthorized aliens;

i. Many of these unauthorized aliens are being employed by unscrupulous New Jersey employers and therefore denying jobs to legal State residents;

j. Many of these unauthorized aliens are paid substandard wages and are purposely misclassified to avoid paying State taxes and contributing to State benefit programs, such as unemployment compensation;

k. Such illegal and unfair competition results in: fewer employment opportunities for legal residents; a reduction in State tax revenues; a continued decline of the State's unemployment insurance fund; a decrease in wages for legal residents; an unfair economic advantage to those employers who do not pay their fair

share of State tax obligations; a negative effect on the State's economy; significant uncompensated costs to local governments and taxpayers; additional unauthorized aliens entering or remaining in New Jersey illegally; and, an erosion of public respect for the rule of law in New Jersey and the United States;

l. The public interest requires that the State of New Jersey hold such unscrupulous employers accountable for their illegal actions, enforce applicable State laws, and impose appropriate penalties to deter such conduct in the future;

m. Employers in New Jersey can now verify that the individuals they employ are eligible for lawful employment in this State through the federal E-verify program;

n. The State must take action to protect law abiding employers and employees and ensure that employers who continue to violate the laws of this State are dealt a progressive series of monetary penalties that will discourage any future violations.

3. As used in this act:

"Employee" means an individual who is employed by an employer.

"Employer" means an individual or entity that transacts business in this State that employs one or more individuals who perform employment services in this State. "Employer" includes the State, any political subdivision of this State and self-employed persons.

"E-verify" means the basic employment verification program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or its successor program.

"Intentionally" means, with respect to a result or to conduct described in this act, that a person's objective is to cause that result or to engage in that conduct.

"Knowingly employ an unauthorized alien" means those actions described in 8 U.S.C. s.1324a. This term shall be interpreted consistently with 8 U.S.C. s.1324a and any applicable federal rules and regulations.

"Unauthorized alien" means an alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 U.S.C. s.1324a(h)(3).

4. a. An employer shall not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien.

b. On receipt of a complaint that an employer allegedly intentionally employs an unauthorized alien or knowingly employs an unauthorized alien, the Attorney General or county prosecutor shall investigate whether the employer has violated subsection a. of this section. When investigating a complaint, the Attorney General or county prosecutor shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to

8U.S.C. s.1373(c). A state, county or local official shall not attempt to independently make a final determination as to whether an alien is authorized to work in the United States. An alien's immigration status or work authorization status shall be verified with the federal government pursuant to 8 U.S.C. s.1373(c).

c. If, after an investigation, the Attorney General or county prosecutor determines that the complaint is not frivolous:

(1) The Attorney General or county prosecutor shall notify the United States Immigration and Customs Enforcement of the unauthorized alien.

(2) The Attorney General or county prosecutor shall notify the local law enforcement agency of the unauthorized alien.

(3) The Attorney General shall notify the appropriate county prosecutor to bring an action pursuant to section 5 of this act if the complaint was originally filed with the Attorney General.

5. a. An action for a violation of section 4 of this act shall be brought against the employer by the county prosecutor in the county where the unauthorized alien employee is employed. The county prosecutor shall not bring an action against any employer for any violation of subsection a. of this section that occurs before July 1, 2011.

b. For any action in Superior Court under this act, the court shall expedite the action, including assigning the hearing at the earliest practicable date.

6. On a finding of a violation of section 4 of this act:

a. For a first violation during a three year period that is a knowing violation the court:

(1) Shall order the employer to terminate the employment of all unauthorized aliens.

(2) Shall order the employer to be subject to a three year probationary period. During the probationary period the employer shall file quarterly reports with the county prosecutor. The reports shall include, but not be limited to, documentation of the E-verify confirmation of each new employee who is hired by the employer at the specific location where the unauthorized alien performed work.

(3) Shall order the employer to pay a penalty of $10,000 for each unauthorized alien employed by the employer at the time the action against the employer is filed with the county prosecutor or the Attorney General. All moneys recovered from a penalty imposed pursuant to this section shall be paid into the State Treasury to the credit of the General Fund.

b. For a second violation of section 4 of this act during the period of probation, the court:

(1) Shall order the employer to terminate the employment of all unauthorized aliens.

(2) Shall order the employer to be subject to an additional five year probationary period. During the probationary period the employer shall file quarterly reports with the county prosecutor. The reports shall include, but not be limited to, documentation of the E-verify confirmation of each new employee who is hired by the employer at the specific location where the unauthorized alien performed work.

(3) Shall order the employer to pay a penalty of $20,000 for each unauthorized alien employed by the employer at the time of the action against the employer being filed with the county prosecutor or the Attorney General. All moneys recovered from a penalty imposed pursuant to this section shall be paid into the State Treasury to the credit of the General Fund.

c. For a third violation of section 4 of this act during the period of probation, the court:

(1) Shall order the employer to terminate the employment of all unauthorized aliens.

(2) Shall order the employer to pay a penalty of $30,000 for each unauthorized alien employed by the employer at the time of the action against the employer being filed with the county prosecutor or the Attorney General. All moneys recovered from a penalty imposed pursuant to this section shall be paid into the State Treasury to the credit of the General Fund.

7. The Attorney General shall maintain copies of court orders that are received pursuant to section 6 of this act and shall maintain a database of the employers who have been found to have committed a first violation of subsection a. of section 4 of this act and make the court orders available on the Attorney General's website.

8. a. In determining whether an employee is an unauthorized alien, the court shall consider only the federal government's determination pursuant to 8 U.S.C. s.1373(c). The federal government's determination creates a rebuttable presumption of the employee's lawful status. The court may take judicial notice of the federal government's determination and may request the federal government to provide automated or testimonial verification pursuant to 8 U.S.C. s.1373(c).

b. For the purposes of this section, proof of verifying the employment authorization of an employee through the E-verify program creates a rebuttable presumption that an employer did not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien.

c. For the purposes of this section, an employer who establishes that it has complied in good faith with the requirements of 8 U.S.C.s.1324b establishes an affirmative defense that the

employer did not intentionally or knowingly employ an unauthorized alien.

9. This act shall not be construed to require an employer to take any action that the employer believes in good faith would violate federal or State law.

10. After December 31, 2011, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-verify program, within ninety days of date of hire.

11. The Attorney General, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations necessary to effectuate the purposes of this act.

12. This act shall take effect immediately.

STATEMENT

This bill, the "New Jersey Jobs Protection Act," requires that all employers use the federal "E-verify" system to check the employment eligibility of each new hire, within ninety days of the date of hire.

The bill establishes a graduated penalty system against any employer who knowingly employs unauthorized aliens. The penalty for the first offense will be a $10,000 fine for each unauthorized alien and three years of monitored probation. During the probationary period the employer is required to file quarterly reports with the county prosecutor. The reports must include, but shall not be limited to, documentation of the E-verify confirmation of each new employee who is hired by the employer at the location where the unauthorized alien performed work.

The penalty for a second offense will be a $20,000 fine for each unauthorized alien and an additional five years of monitored probation. The penalty for a third offense will be a $30,000 fine for each unauthorized alien.

Under the bill, proof that the employee's eligibility to work was confirmed through the E-verify program creates a rebuttable presumption that the employer did not intentionally or knowingly employ an unauthorized alien.

E-verify is an Internet-based system operated jointly by the Department of Homeland Security and the Social Security Administration. It provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. It is currently available to employers without charge.