

# ASSEMBLY, No. 5838

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED NOVEMBER 14, 2019

**Sponsored by:**

**Assemblyman WAYNE P. DEANGELO**

**District 14 (Mercer and Middlesex)**

**Assemblyman JOE DANIELSEN**

**District 17 (Middlesex and Somerset)**

**SYNOPSIS**

Concerns stop-work orders.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 11/15/2019)

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

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

31 c. (1) If the commissioner determines, after either an initial  
32 determination as a result of an audit of a business or an  
33 investigation pursuant to subsection a. of this section, that an  
34 employer is in violation of any State wage, benefit and tax law,  
35 including a violation of R.S.34:15-79, or a failure to meet  
36 obligations required by R.S.43:21-7 or R.S.43:21-14, the  
37 commissioner may issue a stop-work order against the employer  
38 requiring cessation of all business operations of the employer at the  
39 specific place of business or employment in which the violation  
40 exists. The stop-work order may be issued only against the  
41 employer found to be in violation or non-compliance. The order  
42 shall be effective when served upon the employer at the place of  
43 business or, for a particular employer worksite, when served at that  
44 worksite. The order shall remain in effect until the commissioner  
45 issues an order releasing the stop-work order upon finding that the  
46 employer has come into compliance and has paid any penalty  
47 deemed to be satisfactory to the commissioner, or after the  
48 commissioner determines, in a hearing held pursuant to paragraph

1 (2) of this subsection, that the employer did not commit the act on  
2 which the order was based. The stop-work order shall be effective  
3 against any successor entity engaged in the same or equivalent trade  
4 or activity that has one or more of the same principals or officers as  
5 the corporation, partnership or sole proprietorship against which the  
6 stop-work order was issued. The commissioner may assess a civil  
7 penalty of \$5,000 per day against an employer for each day that it  
8 conducts business operations that are in violation of the stop-work  
9 order.

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

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

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

39 d. For purposes of this section:

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

47 "Employee" means any person suffered or permitted to work by  
48 an employer, except a person performing services for remuneration

1 whose services satisfy the factors set forth in subparagraphs  
2 (A),(B), and (C) of R.S.43:21-19(i)(6).

3 “Employ” means to suffer or permit to work.

4 “State wage, benefit and tax laws” means “State wage, benefit  
5 and tax laws” as defined in section 1 of P.L.2009, c.194 (C.34:1A-  
6 1.11).

7

8 2. This act shall take effect immediately.

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## STATEMENT

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13 This bill permits the Commissioner of Labor and Workforce  
14 Development to issue a stop-work order against any employer who  
15 is determined by the commissioner to be in violation of any State  
16 wage, benefit and tax law.

17 A stop-work order issued under the bill requires the cessation of  
18 all business operations at every site where the violation occurs, and  
19 is to remain in effect until the commissioner issues an order  
20 releasing the stop-work order upon a finding that the employer has  
21 agreed to pay the required wages and has paid any wages or penalty  
22 owed. As a condition of release from a stop-work order, the  
23 commissioner may require the employer to file with the department  
24 periodic reports for a probationary period of up to two years. The  
25 commissioner may assess a civil penalty of \$5,000 per day against  
26 an employer for each day that it conducts business operations that  
27 are in violation of the stop-work order.

28 The bill also gives the commissioner authority, when  
29 investigating potential violations, to enter workplaces and inspect  
30 records. An employer who fails to provide access to the workplace  
31 or records or otherwise hinders the commissioner, may be fined not  
32 less than \$1,000 and be guilty of a disorderly persons offense.