

# ASSEMBLY, No. 5839

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED NOVEMBER 14, 2019

**Sponsored by:**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Assemblyman ANTHONY S. VERRELLI**

**District 15 (Hunterdon and Mercer)**

**Assemblyman WAYNE P. DEANGELO**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

**Assemblywoman Downey and Assemblyman Houghtaling**

**SYNOPSIS**

Concerns penalties for misclassification of employees.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/10/2019)**

A5839 MORIARTY, VERRELLI

2

1 AN ACT concerning penalties for violations of State wage, benefit  
2 and tax laws in connection with the misclassification of  
3 employees and supplementing Title 34 of the Revised Statutes.

4

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

7

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

14 (1) an administrative “misclassification penalty” up to a  
15 maximum of \$250 per misclassified employee for a first violation  
16 and up to a maximum of \$1,000 per misclassified employee for  
17 each subsequent violation; and

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

25 When determining the amount of the administrative  
26 “misclassification penalty” imposed pursuant to paragraph (1) of  
27 this subsection, the commissioner shall consider factors which  
28 include the history of previous violations by the employer, the  
29 seriousness of the violation, the good faith of the employer and the  
30 size of the employer’s business. No administrative  
31 “misclassification penalty” shall be levied pursuant to this section  
32 unless the commissioner provides the alleged violator with  
33 notification of the violation and of the amount of penalty, and  
34 provides the alleged violator an opportunity to request a hearing  
35 before the commissioner or his or her designee.

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

47 c. For violations of the State unemployment and disability  
48 benefits laws in connection with the misclassification of one or

1 more employees, the alleged violator may request a hearing in the  
2 manner and within the time prescribed by those laws, and payment  
3 of the administrative "misclassification penalty" shall be due when  
4 assessment for contributions, penalties and interest are due pursuant  
5 to subsection (d) of R.S.43:21-14 or section 31 of P.L.1948, c.110  
6 (C.43:21-55).

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

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

18 f. For purposes of this section, "State wage, benefit and tax  
19 laws" means "State wage, benefit and tax laws" as defined in  
20 section 1 of P.L.2009, c.194 (C.34:1A-1.11), and "State  
21 unemployment and disability benefits laws" mean the  
22 "unemployment compensation law," R.S.43:21-1 et seq., and the  
23 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25  
24 et al.).

25

26 2. This act shall take effect immediately.

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#### STATEMENT

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30 This bill provides for the assessment of penalties for violations  
31 of State wage, benefit and tax laws in connection with the  
32 misclassification of employees.

33 The bill authorizes the Commissioner of Labor and Workforce  
34 Development, in the case of a violation of a State wage, benefit and  
35 tax law in connection with failing to properly classify employees, to  
36 impose the following penalties in addition to any other remedies or  
37 penalties authorized by law: authorized to assess and collect:

38 1. An administrative "misclassification penalty" up to a  
39 maximum of \$250 per misclassified employee for a first violation  
40 and up to a maximum of \$1,000 per misclassified employee for  
41 each subsequent violation; and

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