

[First Reprint]

ASSEMBLY, No. 5839

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED NOVEMBER 14, 2019

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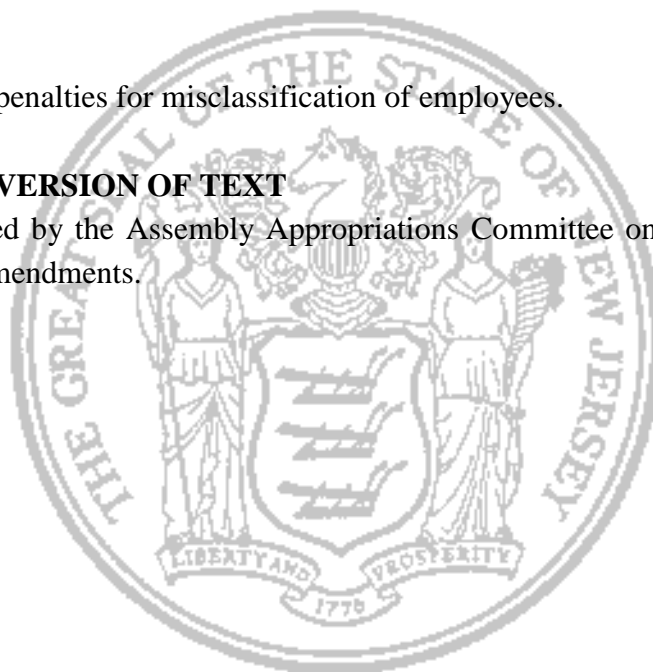
Assemblywoman Downey and Assemblyman Houghtaling

SYNOPSIS

Concerns penalties for misclassification of employees.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on December 12, 2019, with amendments.



(Sponsorship Updated As Of: 1/14/2020)

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

14 (1) an administrative “misclassification penalty” up to a maximum
15 of \$250 per misclassified employee for a first violation and up to a
16 maximum of \$1,000 per misclassified employee for each subsequent
17 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 payments
22 to the commissioner to be held in a special account in trust for the
23 worker or workers, or paid on order of the commissioner directly to
24 the workers or workers affected.

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

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted December 12, 2019.

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

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

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

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

26

27 2. This act shall take effect immediately.