AN ACT concerning enforcement, penalties, and procedures for law regarding failure to pay wages, revising various parts of the statutory law, and supplementing articles 1 and 3 of chapter 11 of Title 34 of the Revised Statutes.

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

1. Section 10 of P.L.1999, c.90 (C.2C:40A-2) is amended to read as follows:

10. Violation of contract to pay employees.

a. An employer who has agreed with an employee or with a bargaining agent for employees to pay wages, compensation or benefits to or for the benefit of employees commits a disorderly persons offense if the employer:

(1) fails to pay wages when due and as required by law; or

(2) fails to pay compensation or benefits as agreed and as required by law, including all State wage, benefit and tax laws within 30 days after due.

b. If a corporate employer violates subsection a., any officer or employee of the corporation who is responsible for the violation commits a disorderly persons offense.

c. Upon the presentation of sufficient evidence of a violation of this section, the fact finder may infer that an employer who fails to present employee records, as required pursuant to State wage, benefit and tax laws, employed the complainant for the period of time, and owes the amount of wages, as alleged in the complaint, unless the employer demonstrates good cause for the failure to present employee records.

d. A complaint alleging a violation of this section shall be filed where the offense occurred, which for purposes of this section may be the place where the employee was hired or the place where the relevant work was performed by the employee.

e. Jurisdiction for prosecution under this section shall be the place where the offense occurred, which for purposes of this section may be the place where the employee was hired or the place where the relevant work was performed by the employee.

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:

1Senate SBA committee amendments adopted January 28, 2019.

2Senate floor amendments adopted March 14, 2019.

3Assembly floor amendments adopted June 10, 2019.
f. An employer found to owe wages to an employee because
the employer committed a violation of this section shall pay the
employee the wages owed plus liquidated damages equal to 200
percent of the wages owed, and reasonable costs of the action to the
employee.

g. In addition to damages provided in this or any other law, an
employer found guilty of violating the provisions of this section
shall be fined $500 plus a penalty equal to 20 percent of any wages
owed for a first offense, and $1,000 plus a penalty equal to 20
percent of any wages owed for subsequent offenses. Any sum
collected as a fine or penalty pursuant to this subsection shall be
applied toward enforcement and administration costs of the
Division of Wage and Hour Compliance in the Department of Labor
and Workforce Development.

h. An employer who is found to have retaliated against an
employee for filing a complaint under this section commits a
disorderly persons offense and shall, upon conviction for the
violation, be fined not less than $100 nor more than $1,000, and
shall be liable to the employee for all wages lost as a result of the
retaliation plus damages equal to 200 percent of the wages lost as a
result of the retaliation, and reasonable costs of the action to the
employee and, if the employee was discharged, be required to offer
reinstatement, unless the reinstatement is prohibited by law.

i. No payment of an amount of wages owed or related
damages, including wages or damages related to retaliation, shall be
required under this section in addition to any amount of wages and
damages paid for the same violation pursuant to any action taken
under State wage and hour laws.

j. For purposes of this section:
“Compensation or benefits” is remuneration received in return
for services rendered and includes, but is not limited to, health
benefits, pensions, medical treatment, disability compensation and
workers’ compensation, including death benefits to dependents of
workers who have died as a result of their employment.

“Employee” means any person suffered or permitted to work by
an employer, except that independent contractors and
subcontractors shall not be considered employees, except that, for
the purposes of subsections c. through i. of this section, “employee”
shall not include any employee working in the construction industry
under the provisions of a collective bargaining agreement.

“Employer” means any individual, partnership, association, joint
stock company, trust, corporation, the administrator or executor of
the estate of a deceased individual, or the receiver, trustee, or
successor of any of the same, employing any person in this State,
except that, for the purposes of subsections c. through i. of this
section, “employer” shall not include any employer in the
construction industry with respect to employees of that employer
working under the provisions of a collective bargaining agreement.
with the employer. For the purposes of this section the officers of a
corporation and any agents having the management of that
corporation shall be deemed to be the employers of the employees
of the corporation.

“State wage and hour laws” means article 1 of chapter 11 of Title
34 of the Revised Statutes and all acts supplementing that article
(R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),
and article 3 of chapter 11 of Title 34 of the Revised Statutes
(R.S.34:11-57 et seq.), but “State wage and hour laws” do not
include the “New Jersey Prevailing Wage Act,” P.L.1963, c.150
(C.34:11-56.25 et seq.), or “The Public Works Contractor
Registration Act,” P.L.1999, c.238 (C.34:11-56.48 et seq.):

“State wage, benefit and tax laws” means State wage and hour
laws and all of the following:
(1) The workers’ compensation law, R.S.34:15-1 et seq.;
(2) The “unemployment compensation law,” R.S.43:21-1 et
seq.;
(3) The “Temporary Disability Benefits Law,” P.L.1948, c.110
(C.43:21-25 et al.);
(4) P.L.2008, c.17 (C.43:21-39.1 et al.); and
seq.

“When due” is the time agreed upon by the employer and
employee but in any case not greater than 16 days of completion of
the work as provided for under section 2 of P.L.1965, c.173
(C.34:11-4.2) and in accordance with a bi-monthly payment
schedule.
(cf: P.L.1999, c.90, s.10)¹

¹[2.]² L.¹ Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is
amended to read as follows:
2. a.²(1)² If the commissioner is notified pursuant to
subsection g. of this section by the Attorney General, the Attorney
General’s designee, or a court, of a conviction of an employer under
subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2), or if²
the commissioner determines that an employer has failed, for one or
more of its employees, to maintain and report every record
regarding wages, benefits and taxes which the employer is required
to maintain and report pursuant to State wage, benefit and tax laws,
as defined in section 1 of this act, and has, in connection with that
failure to maintain or report the records, failed to pay wages,
benefits, taxes or other contributions or assessments as required by
those laws, the commissioner shall, as an alternative to, or in
addition to, any other actions taken in the enforcement of those
laws, notify the employer of the determination and have an audit of
the employer and any successor firm of the employer conducted not
more than 12 months after the determination.
(2) If the commissioner is notified pursuant to subsection g. of this section of a conviction of an employer, the commissioner shall, as an alternative to, or in addition to, any other actions taken in the enforcement of the laws violated by the employer, have an audit of the employer and any successor firm of the employer conducted not more than 12 months after receipt of the notification.

b. If, in an audit conducted pursuant to subsection a. of this section, the commissioner determines that the employer or any successor firm to the employer has continued in its failure to maintain or report records as required by those laws or continued in its failure to pay wages, benefits, taxes or other contributions or assessments as required by those laws, or if the commissioner is notified pursuant to subsection g. of this section of a subsequent conviction of the employer under subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2) and the offense resulting in the conviction occurred subsequent to an audit conducted pursuant to subsection a. of this section, the commissioner:

(1) May, after affording the employer or successor firm notice and an opportunity for a hearing in accordance with the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), issue a written determination directing any appropriate agency to suspend any one or more licenses that are held by the employer or successor firm, for a period of time determined by the commissioner. In determining the length of a suspension, the commissioner shall consider any of the following factors which are relevant:

(a) The number of employees for which the employer or successor firm failed to maintain or report required records and pay required wages, benefits, taxes or other contributions or assessments;

(b) The total amount of wages, benefits, taxes or other contributions or assessments not paid by the employer or successor firm;

(c) Any other harm resulting from the violation;

(d) Whether the employer or successor firm made good faith efforts to comply with any applicable requirements;

(e) The duration of the violation;

(f) The role of the directors, officers or principals of the employer or successor firm in the violation;

(g) Any prior misconduct by the employer or successor firm; and

(h) Any other factors the commissioner considers relevant; and

(2) Shall conduct a subsequent audit or inspection of the employer or any successor firm of the employer not more than 12 months after the date of the commissioner's written determination.

c. If, in the subsequent audit or inspection conducted pursuant to subsection b. of this section, the commissioner determines that
the employer or successor firm has continued in its failure to
maintain or report records as required pursuant to State wage,
benefit and tax laws, as defined in section 1 of this act, and
continued in its failure to pay wages, benefits, taxes or other
contributions or assessments as required by those laws, or if the
commissioner is notified pursuant to subsection g. of this section of
a subsequent conviction of the employer under subsection a.
of section 10 of P.L.1999, c.90 (C.2C:40A-2) for an offense
occurring after the audit conducted pursuant to subsection b. of this
section, the commissioner, after affording the employer or
successor firm notice and an opportunity for a hearing in
accordance with the provisions of the "Administrative Procedure
Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall issue a written
determination directing any appropriate agency to permanently
revoke any one or more licenses that are held by the employer or
any successor firm to the employer and that are necessary to operate
the employer or successor firm.

d. Upon receipt of any written determination of the
commissioner directing an agency to suspend or revoke a license
pursuant to this section, and notwithstanding any other law, the
agency shall immediately suspend or revoke the license.

e. In instances where an employee leasing company has
entered into an employee leasing agreement with a client company
pursuant to P.L.2001, c.260 (C.34:8-67 et seq.), any written
determination by the commissioner directing agencies to suspend an
employer license pursuant to subsection b. of this section, or revoke
an employer license pursuant to subsection c. of this section, for a
failure or continued failure to keep records regarding, and to pay,
wages, benefits and taxes pursuant to State wage, benefit and tax
laws, shall be for the suspension or revocation of the licenses of the
client company and not the licenses of the employee leasing
company if the commissioner determines that the failure or
continued failure was caused by incomplete, inaccurate, misleading,
or false information provided to the employee leasing company by
the client company. Nothing in this subsection shall be construed
as diminishing or limiting the authority or obligation of the
commissioner to rescind the registration of an employee leasing
company pursuant to the provisions of section 10 of P.L.2001,
c.260 (C.34:8-76).

f. If, in the course of an audit or inspection conducted pursuant
to this section, the commissioner discovers that an employee of the
employer or of any successor firm of the employer has failed to
provide compensation to the employee as required under any of the
State wage and hour laws as defined in section 10 of P.L.1999,
c.90 (C.2C:40A-2) R.S.34:11-57, then the commissioner shall
initiate a wage claim on behalf of the employee pursuant to
R.S.34:11-58.
g. Upon the conviction of an employer under subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2) [the Attorney General, the Attorney General’s designee], section 13 of P.L. , c. (C. ) (pending before the Legislature as this bill), subsection a. of section 10 of P.L.1965, c.173 (C.34:11-4.10), subsection a. of section 25 of P.L.1966, c.113 (C.34:11-56a24), or N.J.S.2C:20-2 if the property stolen consists of compensation the employer failed to provide to an employee under any State wage and hour law as defined in R.S.34:11-57, the prosecutor or the court shall notify the commissioner of the employer’s conviction. (cf: P.L.2009, c.194, s.2)

10. a. Any employer who knowingly [and willfully] fails to pay the full amount of wages to an employee agreed to or required by, or in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), or who knowingly violates any other provision of P.L.1965, c.173 (34:11-4.1 et seq.), or who discharges, or in any other manner discriminates against a retaliatory action against an employee by discharging or in any other manner discriminating against the employee because the employer has made a complaint to that employee’s employer, to the commissioner, or to that employee’s authorized representative, that the employer has not paid the employee the full amount of wages agreed upon or required by, and in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to that article or those acts, or because the employee has testified or is about to testify in any proceeding under or relating to that article or those acts, or because the employee has informed any person employee of the employer about rights under State laws regarding wages and hours worked, shall be guilty of a disorderly persons offense and, upon conviction for a first violation, shall be punished by a fine of not less than $100 nor more than $1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment and, upon conviction for a second or subsequent violation, be punished by a fine of not less than $1,000 nor more than $2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment. [Upon conviction for a third or subsequent violation, an employer shall be guilty of a crime of the fourth degree and be punished by a fine of not less than $2,000 nor more than $10,000 or by imprisonment for up to 18 months or by both the
fine and imprisonment. Each week, in any day of which any violation of this act article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.) continues shall constitute a separate and distinct offense. In the case of a discharge or other discriminatory action against the employee which is in violation of this subsection, the employer shall also be required to offer reinstatement in employment to the discharged employee unless the reinstatement is prohibited by law and to correct the discriminatory action, and also to pay to the employee, in full, all wages lost as a result of that discharge or discriminatory action, plus any reasonable cost of the action, and liquidated damages equal to not more than 200 percent of the wages due, under penalty of contempt proceedings. Taking an adverse action against an employee within ninety days of the employee filing a complaint with the commissioner or a claim or action being brought by or on behalf of the employee in a court of competent jurisdiction for a violation of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.) shall raise a presumption that the employer's action was knowingly taken in retaliation, which may be rebutted only by clear and convincing evidence that the action was taken for other, permissible, reasons against the employee. An employee complaint or other communication need not make explicit reference to any section or provision of any State law regarding wages and hours worked to trigger the protections of this section.

b. As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et seq.), when the Commissioner of Labor and Workforce Development finds that an employer has violated that act, or taken any retaliatory action against the employee in violation of subsection a. of this section, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of $250 for a first violation and up to a maximum of $500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor and Workforce Development provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the
commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to ["the penalty enforcement law" (N.J.S.2A:58-1 et seq.)] the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

   c. If any employer fails to pay the full amount of wages to an employee agreed to or required by, or in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), the employee may recover in a civil action the full amount of any wages due, or any wages lost because of any discriminatory retaliatory action taken in violation of subsection a. of this section, plus an amount of liquidated damages equal to not more than 200 percent of the wages lost or of the wages due, together with costs and reasonable attorney's fees as are allowed by the court, except that if there is an agreement of the employee to accept payment of the unpaid wages supervised by the commissioner pursuant to section 9 of P.L.1965, c.173 (C.34:11-4.9) or R.S.34:11-58, the liquidated damages shall be equal to not more than 200 percent of wages that were due prior to the supervised payment. The payment of liquidated damages shall not be required for a first violation by an employer if the employer shows to the satisfaction of the court that the act or omission constituting the violation was an inadvertent error made in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation, and the employer acknowledges that the employer violated the law and pays the amount owed within 30 days of notice of the violation. In a case of retaliation against an employee in violation of the provisions of subsection a. of this section, the employer shall also be required to offer reinstatement in employment to the discharged employee and take other actions as needed to correct the retaliatory action. For purposes of this subsection, an employer taking an adverse action against an employee within ninety days of the employee filing a complaint with the commissioner, or a claim or action being brought by or on behalf of the employee in a court of competent jurisdiction, for a violation of provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.) shall raise a presumption that the employer’s action was taken in retaliation against the employee,
which presumption may be rebutted only by clear and convincing
evidence that the action was taken for other, permissible, reasons.\(^2\)

Any agreement by the employee to work for, or accept, wages paid
which are less than the amount agreed to or required by law, or paid
in a manner other than that required by article 1 of chapter 11 of
Title 34 of the Revised Statutes and all acts supplementing that
article (R.S.34:11-2 et al.), shall be no defense to the action. The
employee shall be entitled to maintain the action for and on behalf
of other similarly situated employees, or designate an agent or
representative to maintain the action for and on behalf of all
similarly situated employees. The employee may bring the action
\(^2\)to recover\(^1\) for all appropriate relief, including reinstatement, the
payment of damages and the recovery of lost wages or\(^5\) unpaid
wages pursuant to this section in the Superior Court\(^3\), and may
bring the action in the Division of Small Claims of the Superior
Court, Law Division, Special Civil Part if the sum of the unpaid
wages and the liquidated damages does not exceed the jurisdictional
limits of the Division of Small Claims\(^3\)\(^4\). Upon the request of any
employee not paid the full wages agreed upon or required by law
and in the manner required by the provisions of article 1 of chapter
11 of Title 34 of the Revised Statutes and all acts supplementing
that article (R.S.34:11-2 et al.), the commissioner may take an
assignment of the wage claim in trust for the assigning employee
and may bring any legal action necessary to collect the claim, and
the employer shall be required to pay to the employee the unpaid
wages and liquidated damages equal to \(^3\)not more than \(^3\) 200 percent
of the amount of the unpaid wages and pay to the commissioner the
costs and reasonable attorney's fees as determined by the court.

\(^3\)The payment of liquidated damages shall not be required for a first
violation by an employer if the employer shows to the satisfaction
of the court that the act or omission constituting the violation was
an inadvertent error made in good faith and that the employer had
reasonable grounds for believing that the act or omission was not a
violation, and the employer acknowledges that the employer
violated the law and pays the amount owed within 30 days of notice
of the violation. \(^3\)

(cf: P.L.1991, c.205, s.3)

\(^1\)[4.] \(^3\)\(^4\) Section 25 of P.L.1966, c.113 (C.34:11-56a24) is
amended to read as follows:

25. a. Any employer who \(^2\)discharges or in any other manner
discriminates\(^2\) takes a retaliatory action\(^2\) against any employee \(^2\)by
discharging or in any other manner discriminating against the
employee\(^2\) because the employee has made any complaint to his
employer, to the commissioner, the director or to their authorized
representatives, or to a representative of the employee, that he has
not been paid wages in accordance with the provisions of this act,
or because such employee has caused to be instituted or is about to
cause to be instituted any proceeding under or related to this act, or
because such employee has testified or is about to testify in any such proceeding, or because such employee has served or is about to serve on a wage board, or because the employee has informed any employee of the employer about rights under State laws regarding wages and hours of work, shall be guilty of a disorderly persons offense and shall, upon conviction for a first violation, be fined not less than $100 nor more than $1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment and, upon conviction for a second or subsequent violation, be punished by a fine of not less than $1,000 nor more than $2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment. Upon conviction for a third or subsequent violation, an employer shall be guilty of a crime of the fourth degree and be punished by a fine of not less than $2,000 nor more than $10,000 or by imprisonment for up to 18 months or by both the fine and imprisonment. Such employer shall also be required, as a condition of such judgment of conviction, to offer reinstatement in employment to any such discharged employee, unless the reinstatement is prohibited by law, and to correct any such discriminatory action, and also to pay to any such employee in full, all wages lost as a result of such discharge or discriminatory action and an additional amount of liquidated damages equal to not more than 200 percent of the wages due, under penalty of contempt proceedings for failure to comply with such requirement. Taking an adverse action against an employee within ninety days of the employee filing a complaint with the commissioner, or a claim or action being brought by or on behalf of the employee in a court of competent jurisdiction, for a violation of P.L.1966, c.113 (C.34:11-56a et seq.) shall raise a presumption that the employer’s action was a discriminatory action knowingly taken in retaliation, which may be rebutted only by clear and convincing evidence that the action was taken for other, permissible, reasons against the employee. An employee complaint or other communication need not make explicit reference to any section or provision of State law regarding wages or hours worked to trigger the protections of this section.

b. As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1966, c.113 (C.34:11-56a et seq.), when the Commissioner of Labor and Workforce Development finds that an employer has violated that act, or taken any retaliatory action against the employee in violation of subsection a. of this section, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of $250 for a first violation and up to a maximum of $500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the
In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), when determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor and Workforce Development provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

Section 26 of P.L.1966, c.113 (C.34:11-56a25) is amended to read as follows:

26. If any employee is paid by an employer less than the minimum fair wage to which the employee is entitled under the provisions of this act, the employee may recover in a civil action the full amount of that minimum wage less any amount actually paid to him or her by the employer, or any wages lost due to the retaliatory action, and an additional amount equal to not more than 200 percent of the amount of the unpaid minimum wages or wages lost due to retaliatory action as liquidated damages, plus costs and reasonable attorney's fees as determined by the court, except that if there is an agreement of the employee to accept payment of the unpaid wages or compensation supervised by the commissioner pursuant to section 24 of P.L.1966, c.113 (C.34:11-
56a23) or R.S.34:11-58, the liquidated damages shall be equal to
2 not more than 200 percent of wages that were due prior to the
3 supervised payment. The payment of liquidated damages shall not
4 be required for a first violation by an employer if the employer
5 shows to the satisfaction of the court that the act or omission
6 constituting the violation was an inadvertent error made in good
7 faith and that the employer had reasonable grounds for believing
8 that the act or omission was not a violation, and the employer
9 acknowledges that the employer violated the law and pays the
10 amount owed within 30 days of notice of the violation. In a case
11 of retaliation against an employee in violation of the provisions of
12 section 24 of P.L.1966, c.113 (C.34:11-56a24), the employer shall
13 also be required to offer reinstatement in employment to the
14 discharged employee, and take other actions as needed to correct
15 the retaliatory action. For purposes of this section, an employer
16 taking an adverse action against an employee within 90 days of the
17 employee filing a complaint with the commissioner or a claim or
18 action being brought by or on behalf of the employee in a court of
19 competent jurisdiction for a violation of P.L.1966, c.113 (C.34:11-
20 56a et seq.) shall raise a presumption that the employer’s action was
21 taken in retaliation against the employee, which presumption may
22 be rebutted only by clear and convincing evidence that the action
23 was taken for other, permissible, reasons. Any agreement between
24 [such] the employee and the employer to work for less than [such]
25 the minimum fair wage shall be no defense to the action. An
26 employee shall be entitled to maintain [such] the action for and on
27 behalf of himself or other employees similarly situated, and [such]
28 the employee and employees may designate an agent or
29 representative to maintain [such] the action for and on behalf of all
30 employees similarly situated. The employee may bring the action
31 to recover unpaid minimum wages, or wages lost due to retaliatory
32 action, or other appropriate relief, including reinstatement and
33 payment of damages pursuant to this section in the Superior
34 Court, and may bring the action in the Division of Small Claims
35 of the Superior Court, Law Division, Special Civil Part if the sum
36 of the amount of unpaid minimum wages or lost wages and the
37 amount of liquidated damages does not exceed the jurisdictional
38 limits of the Division of Small Claims.
39
40 At the request of any employee paid less than the minimum wage
41 to which [such] the employee was entitled under the provisions of
42 [this act] P.L.1966, c.113 (C.34:11-56a et seq.) or under an order,
43 the commissioner may take an assignment of the wage claim in trust
44 for the assigning employee and may bring any legal action
45 necessary to collect the claim, and the employer shall be required to
46 pay to the employee the unpaid wages and liquidated damages equal
47 to not more than 200 percent the amount of the unpaid wages and
48 pay to the commissioner the costs and [such] reasonable attorney's
fees as may be allowed determined by the court. 2 The payment
of liquidated damages shall not be required for a first violation by
an employer if the employer shows to the satisfaction of the court
that the act or omission constituting the violation was an inadvertent
error made in good faith and that the employer had reasonable
grounds for believing that the act or omission was not a violation,
and the employer acknowledges that the employer violated the law
and pays the amount owed within 30 days of notice of the
violation. 3  
(cf: P.L.1966, c.113, s.26)  
6 Section 1 of P.L.1967, c.216 (C.34:11-56a25.1) is
amended to read as follows:  
1. No claim for unpaid minimum wages, unpaid overtime
compensation, 2 unlawful discharge or other discriminatory acts
taken in retaliation against the employee 2 or other damages under
this act shall be valid with respect to any such claim which has
arisen more than 2 six years prior to the commencement of an
action for the recovery thereof. In determining when an action is
commenced, the action shall be considered to be commenced on the
date when a complaint is filed with the Commissioner of the
Department of Labor and Industry Workforce Development or
the Director of the Wage and Hour Compliance, and
notice of such complaint is served upon the employer; or, where an
audit by the Department of Labor and Industry Workforce
Development discloses a probable cause of action for unpaid
minimum wages, unpaid overtime compensation, or other damages,
and notice of such probable cause of action is served upon the
employer by the Director of the Wage and Hour Compliance; or where a cause of action is commenced in a court of
appropriate jurisdiction.  
(cf: P.L.1967, c.216, s.1)  
7. R.S.34:11-57 is amended to read as follows:
34:11-57. As used in this article:
"Commissioner" means the Commissioner of Labor and
Industry Workforce Development or any person or persons in the
department designated in writing by him for the purposes of this
article.
“Community-based organization” means a public, or nonprofit
private, organization funded with public or private funds, or both,
that provides services to day laborers, migrant laborers, temporary
laborers, low wage workers, or any other type of employee.
“Department” means the Department of Labor and Workforce
Development.
"Employee" means any natural person who works for another for hire.
"Employer" means any person, partnership, firm or corporation employing another for hire.

“Legal services organization” means a public, or nonprofit private, organization funded with public or private funds, or both, that provides counseling or advice related to wage protection laws, preparation of legal documents, or representation of any person before a court or administrative agency.


"Wages" means any moneys due an employee from the employer whether payable by the hour, day, week, semimonthly, monthly or yearly and shall include commissions, bonus, piecework compensation and any other benefits arising out of an employment contract.

(cf: P.L.1964, c.92, s.1)

8.7. R.S.34:11-58 is amended to read as follows:
34:11-58. a. An employee may file a claim for wages against an employer under this section or any of the other State wage and hours laws for wages owed related to work performed, including but not limited to wages owed related to unpaid minimum wages, unpaid overtime compensation, wages lost because of unlawful discharge or other discriminatory acts taken in retaliation against the employee, up to six years prior to the date the claim for wages is filed.

b. An employer found to owe an employee wages shall pay the employee the wages owed plus liquidated damages equal to more than 200% of the wages owed, exclusive of any costs or fees.

c. The commissioner is authorized and empowered to investigate any claim for wages due an employee and in such investigation may summon the defendant, subpoena witnesses, administer oaths, take testimony and shall upon such proceeding make a decision or award [when the sum in controversy, exclusive of costs, does not exceed $30,000.00] \(^4\) when the sum in controversy, exclusive of costs, does not exceed $50,000.00.\(^2\)

Such decision or award shall be a judgment when a certified copy thereof is filed with the Superior Court. Such judgment shall be entered in the same manner and have the same effect and be subject to the same proceedings as are judgments rendered in suits duly heard and determined by courts of competent jurisdiction.
d. Upon an investigation of a wage claim initiated pursuant to this section or any of the other State wage and hours laws, if an employer fails to provide sufficient employee records, as required to be kept under any State wage and hour laws, there shall be a rebuttable presumption that the employee worked for the employer for the period of time and for the amount of wages as alleged in the wage claim. The rebuttable presumption shall not apply to an employer that can demonstrate it does not have sufficient employee records as a result of record destruction due to a natural disaster.

e. The commissioner is authorized to supervise the payment of amounts, including liquidated damages, due to employees under an award made pursuant to this section, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employees, and paid on order of the commissioner directly to the employee or employees affected. The employer shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

f. Upon issuing a decision, under this section or any of the other State wage and hours laws, finding wages due to an employee in an amount equal to or greater than $5,000, the commissioner shall:

(1) inform the employer that the commissioner may conduct an audit of the employer or any successor firm of the employer pursuant to section 2 of P.L.2009, c.194 (C.34:1A-1.12); and

(2) notify the Division of Taxation in the Department of the Treasury of the decision and may recommend that the division conduct an audit of the employer to ensure the proper withholding and payment of payroll and other taxes by the employer.

g. No payment of an amount of wages owed or related damages, including wages or damages related to retaliation, shall be required under the provision of this section, or under the provisions of any of the other State wage and hour laws, which results in a violator paying wages owed or damages more than one time for the same violation.

(cf: P.L.2006, c.25, s.1)
to pay an employee any wages owed or damages awarded within ten
days of the time that the determination or judgment requires the
payment, the commissioner may do either or both of the following:
(1) issue, in the manner provided in subsection b. of section 2 of
P.L.2009, c.194 (C.34:1A-1.12), a written determination directing
any appropriate agency to suspend one or more licenses held by the
employer or any successor firm of the employer until the employer
complies with the determination or judgement; or
(2) issue a stop work order against the violators requiring the
cessation of all business operations of the violator. The stop work
order may only be issued against the individual or entity found to be
in violation, and only as to the specific place of business or
employment for which the violation exists. The stop work order
shall be effective when served upon the violator or at a place of
business or employment by posting a copy of the stop work order in
a conspicuous location at the place of business or employment. The
stop work order shall remain in effect until the commissioner issues
an order releasing the stop work order upon a finding that the
violation has been corrected. As a condition of release of a stop-
work order under this section, the commissioner may require the
employer against whom the stop-work order had been issued to file
with the department periodic reports for a probationary period of
two years.

b. Stop work orders and any penalties imposed under a stop
work order against a corporation, partnership, or sole proprietorship
shall be effective against any successor entity that has one or more
of the same principals or officers as the corporation, partnership, or
sole proprietorship against which the stop work order was issued
and that is engaged in the same or equivalent trade or activity.

c. Any employee affected by a stop work order issued pursuant
to this section shall be paid by the employer for the first ten days of
work lost because of the stop work order.
d. A rebuttable presumption that an employer has established a
successor entity shall arise if the two share at least 1\[three\] two 1 of
the following capacities or characteristics:
(1) perform similar work 1\[within the same geographical area\];
(2) occupy the same premises;
(3) have the same telephone or fax number;
(4) have the same email address or Internet website;
(5) perform work in the same geographical area;
(6) employ substantially the same work force, administrative
employees, or both; 1
7\[(7)\] (6) utilize the same tools and
facilities, or equipment;
7\[(8)\] (7) employ or engage the services of any person or
persons involved in the direction or control of the other; or
7\[(9)\] (8) list substantially the same work experience.
[10.] 9.1 (New section) a. A client employer and a labor contractor providing workers to the client employer shall be subject to joint and several liability and shall share civil legal responsibility for any violations of the provisions of State wage and hour laws or violations of the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2) regarding compliance with State wage and hour laws, including provisions regarding retaliatory actions against employees for exercising their rights under any of those laws, and both may be subject to any remedy provided for violations of those laws. A client employer shall not shift to the labor contractor any legal duties or liabilities under the provisions of the “Worker Health and Safety Act,” P.L.1965, c.154 (C.34:6A-1 et seq.) or “The Worker and Community Right to Know Act,” P.L.1983, c.315 (C.34:5A-1 et seq.) with respect to workers supplied by the labor contractor. A waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

b. This section shall not be interpreted as:

(1) imposing individual liability on a homeowner for labor or services received at the home or the owner of a home-based business for labor or services received at the home; or

(2) restricting or limiting the rights of a client employer to recover from a labor contractor any expense to the client employer, or the rights of a labor contractor to recover from a client employer any expense to the labor contractor, resulting from any violation by the labor contractor or client employer of the provisions of State wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40A-2), or restricting or limiting the provisions in contracts between client employers and labor contractors regarding the recovery of expenses pursuant to this paragraph.

c. As used in this section:

“Client employer” means a business entity, regardless of its form, that obtains or is provided workers, directly from a labor contractor or indirectly from a subcontractor, to perform labor or services within its usual course of business.

“Labor contractor” means any individual or entity that supplies, either with or without a contract, directly or indirectly, a client employer with workers to perform labor or services within the client employer’s usual course of business, except that “labor contractor” does not include a bona fide labor organization or apprenticeship program, or a hiring hall operated pursuant to a collective bargaining agreement.

“Usual course of business” means the regular and customary work of a business, performed within or upon the premises or worksite of the client employer, or any other place of business of the client employer for which services or labor are performed.

[11.] 10.1 (New section) Each employer shall provide each current employee and each newly hired employee of the employer, a
written copy of the statement produced by the department pursuant
to subsection c. of section 11 of P.L. 1999, c. 90 (C. 2C:40A-2), with an explanation of how to file a claim or take an action pursuant to those laws.

The department, for the purpose of supporting the enforcement of the provisions of State wage and hour laws and the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2), shall:

a. contract with community-based organizations and legal services organizations to disseminate information to day laborers, migrant laborers, temporary laborers, or any other type of employee concerning the protections afforded by State wage and hour laws and section 10 of P.L.1999, c.90 (C.2C:40A-2), and the process by which an individual may take actions under those laws;

b. contract with community-based organizations and legal services organizations to investigate, prepare, and if necessary, represent employees in actions under State wage and hour laws or section 10 of P.L.1999, c.90 (C.2C:40A-2), including actions under those laws concerning retaliation against employees; and

c. produce, and make available to the public on the website of the department, a statement of employee rights under the provisions of State wage and hour laws and the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2), with an explanation of how to file a claim or take an action pursuant to those laws.

The contracts entered into between the department and community-based organizations and legal services organizations pursuant to this section shall require that the organizations make all services accessible to persons with limited English proficiency and shall provide that, in any case in which the community-based or legal services organization assists or represents employees pursuant to subsection b. of this section, 50 percent of any fees or penalties collected by the department shall be paid to the organization for services provided pursuant to contracts entered into pursuant to this section, and that payment made to an organization under a contract shall be regarded as an enforcement and administrative cost of the Division of Workplace Standards of the department.

The department, and any community-based organization or legal services organization contracting with the department pursuant to this section, shall provide any individual seeking assistance to file a complaint or take an action regarding unpaid wages with a description of all of the applicable remedies available to the individual under State wage and hour laws and section 10 of
P.L.1999, c.90 (C.2C:40A-2), including the individual’s right to obtain liquidated damages, and that that right to damages is waived if the individual agrees to accept payment of the unpaid wages supervised by the commissioner.

1[13.] 12. (New section) a. The commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, shall compile and prominently place on a website, maintained by the department and available to the public, an annual report evaluating the effectiveness and efficiency of the enforcement and administration of wage claims and wage collections. The report shall include, but not be limited to:

(1) the number of complaints, investigations, prosecutions, dispositions, and business license suspensions and revocations, the number and amount of penalties, the amount of wages recovered, and the number of workers effected;

(2) an enumeration and description of all community-based and legal services organizations contracted by the department to support the enforcement; and

(3) recommendations for strengthening the implementation and enforcement of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. The commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, shall compile and prominently place on a website, maintained by the department and available to the public, the following information regarding each wage claim in which an employer was found to have been in violation of one or more State wage and hour laws in a final determination by the commissioner or a judgement of a court made during the preceding period of not less than 12 months:

(1) the name and address of the employer;

(2) the nature of the claim, including whether it is a claim for one or more of the following: unpaid wages; failure to pay the minimum wage; failure to pay required overtime; or retaliation against an employee in connection with State wage and hour laws;

(3) the number of affected employees, and the amount of wages found owed; and

(4) any findings, penalties, and business license suspensions or revocations that resulted from the wage claim.

The information on a claim shall be placed on the website not more than 30 days after the final determination or judgement is made.

213. (New section) a. A person commits the crime of pattern of wage nonpayment if the person knowingly commits an act that violates the provisions of N.J.S.2C:40A-2, N.J.S.2C:20-2 if the property stolen consists of compensation the employer failed to provide to an employee as required under the provisions of any
State wage and hour law as defined in R.S. 34:11-57, subsection a, of section 10 of P.L.1965, c.173 (C.34:11-4.10), or subsection a, of section 25 of P.L.1966, c.113 (C.34:11-56a24), if the person has, on two or more prior occasions, been convicted of a violation of the provisions of any of those laws. It shall not be a defense that the violations were not part of a common plan or scheme, or did not have similar methods of commission.

b. Pattern of wage non-payment is a crime of the third degree, except that the presumption of nonimprisonment set forth in subsection e. of N.J.S. 2C:44-1 for persons who have not previously been convicted of an offense shall not apply. Notwithstanding the provisions of N.J.S. 2C:1-8 or any other law, a conviction of pattern of wage non-payment shall not merge with a conviction of violation of N.J.S. 2C:40A-2, N.J.S. 2C:20-2, subsection a, of section 10 of P.L.1965, c.173 (C.34:11-4.10), subsection a, of section 25 of P.L.1966, c.113 (C.34:11-56a24), or any other criminal offense, nor shall such other conviction merge with a conviction under this section.

c. An employer found to be in violation of this section shall be deemed to have caused loss to the employees in the amount by which the employees were paid less than the full wages agreed upon or required by law and shall be subject to the provisions of N.J.S. 2C:43-3 regarding fines and restitution to victims and be subject to other pertinent provisions of Title 2C of the New Jersey Statutes, including, but not limited to, N.J.S. 2C:43-4, 2C:43-6 and 2C:44-1.²

¹[14.] ²[13.²] ¹4.² This act shall take effect immediately², except that section 13 shall take effect on the first day of the third month following enactment².

Concerns law regarding failure to pay wages.