

P.L. 2019, CHAPTER 374, *approved January 20, 2020*  
Assembly, No. 5840 (*Second Reprint*)

1 AN ACT concerning joint and several liability for the payment of  
2 employer tax laws and amending R.S.34:11-57 and P.L.2019,  
3 c.212.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. R.S.34:11-57 is amended to read as follows:

9 34:11-57. As used in this article:

10 "Commissioner" means the Commissioner of Labor and  
11 Workforce Development or any person or persons in the department  
12 designated in writing by him for the purposes of this article.

13 "Community-based organization" means a public, or nonprofit  
14 private, organization funded with public or private funds, or both,  
15 that provides services to day laborers, migrant laborers, temporary  
16 laborers, low wage workers, or any other type of employee.

17 "Department" means the Department of Labor and Workforce  
18 Development.

19 "Employee" means any natural person who works for another for  
20 hire.

21 "Employer" means any person, partnership, firm or corporation  
22 employing another for hire.

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

28 "State employer tax laws" means the workers' compensation  
29 law, R.S.34:15-1 et seq., the "unemployment compensation law,"  
30 R.S.43:21-1 et seq., the "Temporary Disability Benefits Law,"  
31 P.L.1948, c.110 (C.43:21-25 et al.), P.L.2008, c.17 (C.43:21-  
32 39.1 et al.), and the "New Jersey Gross Income Tax Act,"  
33 N.J.S.54A:1-1 et seq.

34 "State wage and hour laws" means article 1 of chapter 11 of Title  
35 34 of the Revised Statutes and all acts supplementing that article  
36 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that  
37 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),  
38 and article 3 of chapter 11 of Title 34 of the Revised Statutes  
39 (R.S.34:11-57 et seq.), but "State wage and hour laws" do not  
40 include the "New Jersey Prevailing Wage Act," P.L.1963, c.150  
41 (C.34:11-56.25 et seq.), or "The Public Works Contractor  
42 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

**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:

<sup>1</sup>Assembly ALA committee amendments adopted November 18, 2019.

<sup>2</sup>Assembly AAP committee amendments adopted December 12, 2019.

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

6 (cf: P.L.2019, c.212, s.6)

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8 <sup>1</sup>[2. Section 9 of P.L.2019, c.212 (C.34:11-58.2) is amended to  
9 read as follows:

10 9. a. A client employer and a labor contractor providing  
11 workers to the client employer shall be subject to joint and several  
12 liability and shall share civil legal responsibility for any violations  
13 of the provisions of State wage and hour laws or State employer tax  
14 laws, or violations of the provisions of section 10 of P.L.1999, c.90  
15 (C.2C:40A-2) regarding compliance with State wage and hour laws  
16 or State employer tax laws, including provisions of those laws  
17 regarding retaliatory actions against employees for exercising their  
18 rights under any of those laws and provisions of those laws  
19 regarding the misclassification of workers, and both the client  
20 employer and the labor contractor may be subject to any remedy  
21 provided for violations of those laws. A client employer shall not  
22 shift to the labor contractor any legal duties or liabilities under the  
23 provisions of the "Worker Health and Safety Act," P.L.1965, c.154  
24 (C.34:6A-1 et seq.) or "The Worker and Community Right to Know  
25 Act," P.L.1983, c.315 (C.34:5A-1 et seq.) with respect to workers  
26 supplied by the labor contractor. A waiver of the provisions of this  
27 section is contrary to public policy, and is void and unenforceable.

28 b. This section shall not be interpreted as:

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

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

41 c. Any individual acting on behalf of an employer, including a  
42 client employer or labor contractor, who violates any provision of  
43 State wage and hour laws or State employer tax laws, or any  
44 provision of section 10 of P.L.1999, c.90 (C.2C:40A-2) regarding  
45 compliance with State wage and hour laws or State employer tax  
46 laws, including any provision of those laws concerning the  
47 misclassification of workers, may be held liable as the employer for  
48 the violation. For the purposes of this section, "person acting on  
49 behalf of an employer" includes an individual acting on behalf of an

1 employer who is an owner, director, officer, or manager of the  
2 employer.

3 d. As used in this section:

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

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

15 (cf: P.L.2019, c.212, s.9)]<sup>1</sup>

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17 <sup>1</sup>2. Section 9 of P.L.2019, c.212 (C.34:11-58.2) is amended to  
18 read as follows:

19 9. a. A client employer and a labor contractor providing  
20 workers to the client employer shall be subject to joint and several  
21 liability and shall share civil legal responsibility for any violations  
22 of the provisions of State wage and hour laws or State employer tax  
23 laws, or violations of the provisions of section 10 of P.L.1999, c.90  
24 (C.2C:40A-2) regarding compliance with State wage and hour laws  
25 or State employer tax laws, including provisions of those laws  
26 regarding retaliatory actions against employees for exercising their  
27 rights under any of those laws and provisions of those laws  
28 regarding the misclassification of workers, and both the client  
29 employer and the labor contractor may be subject to any remedy  
30 provided for violations of those laws. A client employer shall not  
31 shift to the labor contractor any legal duties or liabilities under the  
32 provisions of the "Worker Health and Safety Act," P.L.1965, c.154  
33 (C.34:6A-1 et seq.) or "The Worker and Community Right to Know  
34 Act," P.L.1983, c.315 (C.34:5A-1 et seq.) with respect to workers  
35 supplied by the labor contractor. A waiver of the provisions of this  
36 section is contrary to public policy, and is void and unenforceable.

37 b. This section shall not be interpreted as:

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

41 (2) restricting or limiting the rights of a client employer to  
42 recover from a labor contractor any expense to the client employer,  
43 or the rights of a labor contractor to recover from a client employer  
44 any expense to the labor contractor, resulting from any violation by  
45 the labor contractor or client employer of the provisions of State  
46 wage and hour laws or State employer tax laws, or of section 10 of  
47 P.L.1999, c.90 (C.2C:40A-2), or restricting or limiting the  
48 provisions in contracts between client employers and labor

1 contractors regarding the recovery of expenses pursuant to this  
2 paragraph.

3 c. Any person acting on behalf of an employer, including a  
4 client employer or labor contractor, who violates any provision of  
5 State wage and hour laws or State employer tax laws, or any  
6 provision of section 10 of P.L.1999, c.90 (C.2C:40A-2) regarding  
7 compliance with State wage and hour laws or State employer tax  
8 laws, including any provision of those laws concerning the  
9 misclassification of workers, may be held liable as the employer for  
10 the violation. For the purposes of this section, “person acting on  
11 behalf of an employer” includes an individual acting on behalf of an  
12 employer who is an owner, director, officer, or manager of the  
13 employer.

14 d. As used in this section:

15 "Client employer" means a business entity, regardless of its  
16 form, that obtains or is provided workers, directly from a labor  
17 contractor or indirectly from a subcontractor, to perform labor or  
18 services within its usual course of business<sup>2</sup>, but does not include a  
19 "contractor" as defined in section 3 of P.L.1999, c.238 (C.34:11-  
20 56.50)<sup>2</sup>.

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

28 "Usual course of business" means the regular and customary  
29 work of a business, performed within or upon the premises or  
30 worksite of the client employer, or any other place of business of  
31 the client employer for which services or labor are performed.<sup>1</sup>

32 (cf: P.L.2019, c.212, s.9)

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34 3. This act shall take effect immediately.

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Concerns joint liability for payment of employer tax law.