

CHAPTER 212

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 2 of P.L.2009, c.194 (C.34:1A-1.12) is amended to read as follows:

C.34:1A-1.12 Commissioner's actions relative to employer violations.

2. a. (1) If 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 conviction of the employer 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 conviction of the employer 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 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), section 13 of P.L.2019, c.212 (C.34:11-58.6), 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.

2. Section 10 of P.L.1965, c.173 (C.34:11-4.10) is amended to read as follows:

C.34:11-4.10 Violations, penalties.

10. a. Any employer who knowingly 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 (C.34:11-4.1 et seq.), or who takes a retaliatory action against an employee by discharging or in any other manner discriminating against the employee because the employee 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 that 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 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 \$500 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. Each week, in any day of which any 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.) 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 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 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 be considered presumptive evidence that the employer's action was knowingly taken in retaliation 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 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 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. 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 for all appropriate relief, including reinstatement, the payment of damages and the recovery of lost wages or unpaid wages pursuant to this section in the Superior Court. 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 not more than 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. 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. Section 25 of P.L.1966, c.113 (C.34:11-56a24) is amended to read as follows:

C.34:11-56a24 Penalties for violations.

25. a. Any employer who takes a retaliatory action against any employee by discharging or in any other manner discriminating against the employee 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 \$500 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. The employer shall also be required, as a condition of such judgment of conviction, to offer reinstatement in employment to the discharged employee 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 lost, 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 be considered presumptive evidence that the employer's action was knowingly taken in retaliation 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 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 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.

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

C.34:11-56a25 Civil action by employee to recover wages, additional amount.

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 P.L.1966, c.113 (C.34:11-56a et seq.) or by virtue of a minimum fair wage order, or suffers a loss of wages or other damages because of a retaliatory action by the employer in violation of the provisions of section 24 of P.L.1966, c.113 (C.34:11-56a24), 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 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 section 24 of P.L.1966, c.113 (C.34:11-56a24), 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 section, an employer taking an adverse action against an employee within 90 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 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. Any agreement between the employee and the employer to work for less than the minimum fair wage shall be no defense to the action. An employee shall be entitled to maintain the action for and on behalf of himself or other employees similarly situated, and the employee and employees may designate an agent or representative to maintain the action for and on behalf of all employees similarly situated.

The employee may bring the action to recover unpaid minimum wages, or wages lost due to retaliatory action, or other appropriate relief, including reinstatement and payment of damages pursuant to this section, in the Superior Court.

At the request of any employee paid less than the minimum wage to which the employee was entitled under the provisions of P.L.1966, c.113 (C.34:11-56a et seq.) or under an order, 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 not more than 200 percent the amount of the unpaid wages and pay to the commissioner the costs and reasonable attorney's fees as determined by the court. 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.

5. Section 1 of P.L.1967, c.216 (C.34:11-56a25.1) is amended to read as follows:

C.34:11-56a25.1 Limitations; commencement of action.

1. No claim for unpaid minimum wages, unpaid overtime compensation, unlawful discharge or other discriminatory acts taken in retaliation against the employee, or other damages under this act shall be valid with respect to any such claim which has arisen more than 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 Workforce Development or the Director of Wage and Hour Compliance, and notice of such complaint is served upon the employer; or, where an audit by the Department of Labor and 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 Wage and Hour Compliance; or where a cause of action is commenced in a court of appropriate jurisdiction.

6. R.S.34:11-57 is amended to read as follows:

Definitions.

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

"Commissioner" means the Commissioner of Labor and 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.

“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.).

"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.

7. R.S.34:11-58 is amended to read as follows:

Claims; investigation; judgment.

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 not 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 \$50,000.

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 provisions 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.

C.34:11-58.1 Failure of employer to comply.

8. a. If an employer fails to comply with a final determination of the commissioner or a judgment of a court, including a small claims court, made under the provisions of State wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40-2), to pay an employee any wages owed or damages awarded within ten days of the time that the determination or judgement 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 two of the following capacities or characteristics:

- (1) perform similar work 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) employ substantially the same work force, administrative employees, or both;
- (6) utilize the same tools, facilities, or equipment;
- (7) employ or engage the services of any person or persons involved in the direction or control of the other; or
- (8) list substantially the same work experience.

C.34:11-58.2 Joint and several liability for client employer and labor contractor; definitions.

9. 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.

C.34:11-58.3 Provision of written copy of statement to employees.

10. 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 section 11 of P.L.2019, c.212 (C.34:11-58.4) of the employee's 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.

C.34:11-58.4 Actions of department supporting enforcement; statement of employee rights.

11. 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), may 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 and shall produce, and make available to the public on the website of the department in printable form, 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. Any 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.

C.34:11-58.5 Annual report; posting of information.

12. 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 affected;

(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.2019, c.212 (C.34:11-58.1 et al.).

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.

C.34:11-58.6 Crime of pattern of wage nonpayment.

13. 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.

14. This act shall take effect immediately, except that section 13 shall take effect on the first day of the third month following enactment.

Approved August 6, 2019.