

## CHAPTER 374

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

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

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

"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.

2. Section 9 of P.L.2019, c.212 (C.34:11-58.2) is amended to read as follows:

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 State employer tax 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 or State employer tax laws, including provisions of those laws regarding retaliatory actions against employees for exercising their rights under

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

d. 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, but does not include a "contractor" as defined in section 3 of P.L.1999, c.238 (C.34:11-56.50).

"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.

3. This act shall take effect immediately.

Approved January 20, 2020.