

[Second Reprint]
SENATE, No. 1790

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 5, 2018

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Concerns law regarding failure to pay wages.

CURRENT VERSION OF TEXT

As amended by the Senate on March 14, 2019.



(Sponsorship Updated As Of: 3/26/2019)

1 AN ACT concerning enforcement, penalties, and procedures for law
2 regarding failure to pay wages, revising various parts of the
3 statutory law, and supplementing ²**[article]** articles 1 and² 3 of
4 chapter 11 of Title 34 of the Revised Statutes.

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

8
9 ¹**[**1. Section 10 of P.L.1999, c.90 (C.2C:40A-2) is amended to
10 read as follows:

11 10. Violation of contract to pay employees.

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

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

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

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

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

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

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

38 f. An employer found to owe wages to an employee because
39 the employer committed a violation of this section shall pay the
40 employee the wages owed plus liquidated damages equal to 200
41 percent of the wages owed, and reasonable costs of the action to the
42 employee.

43 g. In addition to damages provided in this or any other law, an
44 employer found guilty of violating the provisions of this section
45 shall be fined \$500 plus a penalty equal to 20 percent of any wages

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.

1 owed for a first offense, and \$1,000 plus a penalty equal to 20
2 percent of any wages owed for subsequent offenses. Any sum
3 collected as a fine or penalty pursuant to this subsection shall be
4 applied toward enforcement and administration costs of the
5 Division of Wage and Hour Compliance in the Department of Labor
6 and Workforce Development.

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

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

21 j. For purposes of this section:

22 “Compensation or benefits” is remuneration received in return
23 for services rendered and includes, but is not limited to, health
24 benefits, pensions, medical treatment, disability compensation and
25 workers’ compensation, including death benefits to dependents of
26 workers who have died as a result of their employment.

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

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

45 “State wage and hour laws” means article 1 of chapter 11 of Title
46 34 of the Revised Statutes and all acts supplementing that article
47 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
48 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),
49 and article 3 of chapter 11 of Title 34 of the Revised Statutes

1 (R.S.34:11-57 et seq.), but “State wage and hour laws” do not
 2 include the "New Jersey Prevailing Wage Act," P.L.1963, c.150
 3 (C.34:11-56.25 et seq.), or "The Public Works Contractor
 4 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.):

5 “State wage, benefit and tax laws” means State wage and hour
 6 laws and all of the following:

7 (1) The workers’ compensation law, R.S.34:15-1 et seq.:

8 (2) The “unemployment compensation law,” R.S.43:21-1 et
 9 seq.:

10 (3) The “Temporary Disability Benefits Law,” P.L.1948, c.110
 11 (C.43:21-25 et al.);

12 (4) P.L.2008, c.17 (C.43:21-39.1 et al.); and

13 (5) The “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et
 14 seq.

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

20 (cf: P.L.1999, c.90, s.10)]¹

21
 22 ¹[2.] 1.¹ Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is
 23 amended to read as follows:

24 2. a.²(1)² If ²[the commissioner is notified pursuant to
 25 subsection g. of this section by the Attorney General, the Attorney
 26 General’s designee, or a court, of a conviction of an employer under
 27 subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2), or if]²
 28 the commissioner determines that an employer has failed, for one or
 29 more of its employees, to maintain and report every record
 30 regarding wages, benefits and taxes which the employer is required
 31 to maintain and report pursuant to State wage, benefit and tax laws,
 32 as defined in section 1 of this act, and has, in connection with that
 33 failure to maintain or report the records, failed to pay wages,
 34 benefits, taxes or other contributions or assessments as required by
 35 those laws, the commissioner shall, as an alternative to, or in
 36 addition to, any other actions taken in the enforcement of those
 37 laws, notify the employer of the determination and have an audit of
 38 the employer and any successor firm of the employer conducted not
 39 more than 12 months after the determination.

40 ²(2) If the commissioner is notified pursuant to subsection g. of
 41 this section of a conviction of an employer, the commissioner shall,
 42 as an alternative to, or in addition to, any other actions taken in the
 43 enforcement of the laws violated by the employer, have an audit of
 44 the employer and any successor firm of the employer conducted not
 45 more than 12 months after receipt of the notification.²

46 b. If, in an audit conducted pursuant to subsection a. of this
 47 section, the commissioner determines that the employer or any
 48 successor firm to the employer has continued in its failure to
 49 maintain or report records as required by those laws ²[and] or²

1 continued in its failure to pay wages, benefits, taxes or other
2 contributions or assessments as required by those laws, or if the
3 commissioner is notified pursuant to subsection g. of this section of
4 a ²[subsequent]² conviction of the employer ²[under subsection a.
5 of section 10 of P.L.1999, c.90 (C.2C:40A-2)] and the offense
6 resulting in the conviction occurred subsequent to an audit
7 conducted pursuant to subsection a. of this section², the
8 commissioner:

9 (1) May, after affording the employer or successor firm notice
10 and an opportunity for a hearing in accordance with the provisions
11 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
12 1 et seq.), issue a written determination directing any appropriate
13 agency to suspend any one or more licenses that are held by the
14 employer or successor firm, for a period of time determined by the
15 commissioner. In determining the length of a suspension, the
16 commissioner shall consider any of the following factors which are
17 relevant:

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

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

25 (c) Any other harm resulting from the violation;

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

28 (e) The duration of the violation;

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

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

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

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

37 c. If, in the subsequent audit or inspection conducted pursuant
38 to subsection b. of this section, the commissioner determines that
39 the employer or successor firm has continued in its failure to
40 maintain or report records as required pursuant to State wage,
41 benefit and tax laws, as defined in section 1 of this act, and
42 continued in its failure to pay wages, benefits, taxes or other
43 contributions or assessments as required by those laws, or if the
44 commissioner is notified pursuant to subsection g. of this section of
45 a ²[subsequent]² conviction of the employer ²[under subsection a.
46 of section 10 of P.L.1999, c.90 (C.2C:40A-2)] for an offense
47 occurring after the audit conducted pursuant to subsection b. of this
48 section², the commissioner, after affording the employer or
49 successor firm notice and an opportunity for a hearing in

1 accordance with the provisions of the "Administrative Procedure
2 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall issue a written
3 determination directing any appropriate agency to permanently
4 revoke any one or more licenses that are held by the employer or
5 any successor firm to the employer and that are necessary to operate
6 the employer or successor firm.

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

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

29 f. If, in the course of an audit or inspection conducted pursuant
30 to this section, the commissioner discovers that an employee of the
31 employer or of any successor firm of the employer has failed to
32 provide compensation to the employee as required under any of the
33 State wage and hour laws as defined in ²[section 10 of P.L.1999,
34 c.90 (C.2C:40A-2)] R.S.34:11-57², then the commissioner shall
35 initiate a wage claim on behalf of the employee pursuant to
36 R.S.34:11-58.

37 g. Upon the conviction of an employer under subsection a. of
38 section 10 of P.L.1999, c.90 (C.2C:40A-2) ²[the Attorney General,
39 the Attorney General's designee,], section 13 of P.L. , c. (C.)
40 (pending before the Legislature as this bill), subsection a. of section
41 10 of P.L.1965, c.173 (C.34:11-4.10), subsection a. of section 25 of
42 P.L.1966, c.113 (C.34:11-56a24), or N.J.S.2C:20-2 if the property
43 stolen consists of compensation the employer failed to provide to an
44 employee under any State wage and hour law as defined in
45 R.S.34:11-57, the prosecutor² or the court shall notify the
46 commissioner of the employer's conviction.

47 (cf: P.L.2009, c.194, s.2)

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

3 10. a. Any employer who knowingly ²~~and willfully~~ fails to
4 pay the full amount of wages to an employee agreed to or required
5 by, or in the manner required by, the provisions of article 1 of
6 chapter 11 of Title 34 of the Revised Statutes and all acts
7 supplementing that article (R.S.34:11-2 et al.), or who knowingly²
8 violates any ²other² provision of P.L.1965, c.173 (34:11-4.1 et
9 seq.), or who ²discharges, or in any other manner discriminates²
10 takes a retaliatory action² against an employee ²by discharging or in
11 any other manner discriminating against the employee² because the
12 employee has made a complaint to that employee's employer, to the
13 commissioner, or to that employee's authorized representative, that
14 the employer has not paid the employee the full amount of wages
15 agreed upon or required by, and in the manner required by, the
16 provisions of article 1 of chapter 11 of Title 34 of the Revised
17 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),
18 or because the employee has caused to be instituted or is about to
19 cause to be instituted any proceeding under or related to that article
20 or those acts, or because that employee has testified or is about to
21 testify in any proceeding under or relating to that article or those
22 acts, or because the employee has informed any ²person²
23 employee of the employer² about rights under State laws regarding
24 wages and hours worked, shall be guilty of a disorderly persons
25 offense and, upon conviction for a ¹first¹ violation, shall be
26 punished by a fine of not less than ¹~~100~~ ¹\$500¹ nor more than
27 \$1,000 ¹or by imprisonment for not less than 10 nor more than 90
28 days or by both the fine and imprisonment and, upon conviction for
29 a second ²or subsequent² violation, be punished by a fine of not less
30 than \$1,000 nor more than \$2,000 or by imprisonment for not less
31 than 10 nor more than 100 days or by both the fine and
32 imprisonment¹. ²~~1~~ Upon conviction for a third or subsequent
33 violation, an employer shall be guilty of a crime of the fourth
34 degree and be punished by a fine of not less than \$2,000 nor more
35 than \$10,000 or by imprisonment for up to 18 months or by both the
36 fine and imprisonment.¹ ² Each ¹week, in any¹ day ¹during¹ of¹
37 which any violation of ~~this act~~ article 1 of chapter 11 of Title 34
38 of the Revised Statutes and all acts supplementing that article
39 (R.S.34:11-2 et al.) continues shall constitute a separate and distinct
40 offense. In the case of a discharge or other discriminatory action
41 against the employee which is in violation of this subsection, the
42 employer shall ²also² be required to offer reinstatement in
43 employment to the discharged employee ², unless the
44 reinstatement is prohibited by law,² and to correct the
45 discriminatory action, and also to pay to the employee, in full, all
46 wages lost as a result of that discharge or discriminatory action,
47 plus ²any reasonable cost of the action, and² liquidated damages

1 equal to ²not more than² 200 percent of the wages due, under
2 penalty of contempt proceedings. Taking an adverse action against
3 an employee within ninety days of the employee filing a complaint
4 with the commissioner ²or a claim or action being brought by or on
5 behalf of the employee in a court of competent jurisdiction² for a
6 violation of article 1 of chapter 11 of Title 34 of the Revised
7 Statutes and all acts supplementing that article (R.S.34:11-2 et al.)
8 shall ²["raise a presumption"] be considered presumptive evidence²
9 that the ²employer's² action was ²["a discriminatory action"]
10 knowingly² taken in retaliation²["], which may be rebutted only by
11 clear and convincing evidence that the action was taken for other,
12 permissible, reasons"] against the employee². An employee
13 complaint or other communication need not make explicit reference
14 to any section or provision of any State law regarding wages and
15 hours worked to trigger the protections of this section.

16 b. As an alternative to or in addition to any other sanctions
17 provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et
18 seq.), when the Commissioner of Labor and Workforce
19 Development finds that an employer has violated that act, or taken
20 any ²["discriminatory"] retaliatory² action against the employee in
21 violation of subsection a. of this section, the commissioner is
22 authorized to assess and collect administrative penalties, up to a
23 maximum of \$250 for a first violation and up to a maximum of
24 \$500 for each subsequent violation, specified in a schedule of
25 penalties to be promulgated as a rule or regulation by the
26 commissioner in accordance with the "Administrative Procedure
27 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the
28 amount of the penalty imposed because of a violation, the
29 commissioner shall consider factors which include the history of
30 previous violations by the employer, the seriousness of the
31 violation, the good faith of the employer and the size of the
32 employer's business. No administrative penalty shall be levied
33 pursuant to this section unless the Commissioner of Labor and
34 Workforce Development provides the alleged violator with
35 notification of the violation and of the amount of the penalty by
36 certified mail and an opportunity to request a hearing before the
37 commissioner or his designee within 15 days following the receipt
38 of the notice. If a hearing is requested, the commissioner shall
39 issue a final order upon such hearing and a finding that a violation
40 has occurred. If no hearing is requested, the notice shall become a
41 final order upon expiration of the 15-day period. Payment of the
42 penalty is due when a final order is issued or when the notice
43 becomes a final order. Any penalty imposed pursuant to this
44 section may be recovered with costs in a summary proceeding
45 commenced by the commissioner pursuant to **["the penalty**
46 **enforcement law"** (N.J.S.2A:58-1 et seq.)**]** the "Penalty
47 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
48 Any sum collected as a fine or penalty pursuant to this section shall
49 be applied toward enforcement and administration costs of the

1 Division of Workplace Standards in the Department of Labor and
2 Workforce Development.

3 c. If any employer fails to pay the full amount of wages to an
4 employee agreed to or required by, or in the manner required by,
5 the provisions of article 1 of chapter 11 of Title 34 of the Revised
6 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),
7 the employee may recover in a civil action the full amount of any
8 wages due, or any wages ²[due] lost² because of any
9 ²[discriminatory] retaliatory² action ²taken² in violation of
10 subsection a. of this section, plus an amount of liquidated damages
11 equal to 200 percent of the wages ²lost or of the wages² due,
12 together with costs and reasonable attorney's fees as are allowed by
13 the court, except that if there is an agreement of the employee to
14 accept payment of the unpaid wages supervised by the
15 commissioner pursuant to section 9 of P.L.1965, c.173 (C.34:11-
16 4.9) or R.S.34:11-58, the liquidated damages shall be equal to 200
17 percent of wages that were due prior to the supervised payment. ²In
18 a case of retaliation against an employee in violation of the
19 provisions of subsection a. of this section, the employer shall also
20 be required to offer reinstatement in employment to the discharged
21 employee and take other actions as needed to correct the retaliatory
22 action. For purposes of this subsection, an employer taking an
23 adverse action against an employee within ninety days of the
24 employee filing a complaint with the commissioner, or a claim or
25 action being brought by or on behalf of the employee in a court of
26 competent jurisdiction, for a violation of provisions of article 1 of
27 chapter 11 of Title 34 of the Revised Statutes and all acts
28 supplementing that article (R.S.34:11-2 et al.) shall raise a
29 presumption that the employer's action was taken in retaliation
30 against the employee, which presumption may be rebutted only by
31 clear and convincing evidence that the action was taken for other,
32 permissible, reasons.² Any agreement by the employee to work for,
33 or accept, wages paid which are less than the amount agreed to or
34 required by law, or paid in a manner other than that required by
35 article 1 of chapter 11 of Title 34 of the Revised Statutes and all
36 acts supplementing that article (R.S.34:11-2 et al.), shall be no
37 defense to the action. The employee shall be entitled to maintain
38 the action for and on behalf of other similarly situated employees,
39 or designate an agent or representative to maintain the action for
40 and on behalf of all similarly situated employees. The employee
41 may bring the action ²[to recover] for all appropriate relief,
42 including reinstatement, the payment of damages and the recovery
43 of lost wages or² unpaid wages pursuant to this section in the
44 Superior Court, and may bring the action in the Division of Small
45 Claims of the Superior Court, Law Division, Special Civil Part if
46 the sum of the unpaid wages and the liquidated damages does not
47 exceed the jurisdictional limits of the Division of Small Claims.
48 Upon the request of any employee not paid the full wages agreed
49 upon or required by law and in the manner required by the

1 provisions of article 1 of chapter 11 of Title 34 of the Revised
2 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),
3 the commissioner may take an assignment of the wage claim in trust
4 for the assigning employee and may bring any legal action
5 necessary to collect the claim, and the employer shall be required to
6 pay to the employee the unpaid wages and liquidated damages equal
7 to 200 percent of the amount of the unpaid wages and pay to the
8 commissioner the costs and reasonable attorney's fees as determined
9 by the court.

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

11
12 ¹~~4.~~ ^{3.} Section 25 of P.L.1966, c.113 (C.34:11-56a24) is
13 amended to read as follows:

14 25. a. Any employer who ²~~discharges or in any other manner~~
15 ~~discriminates~~ ²takes a retaliatory action against any employee ²by
16 discharging or in any other manner discriminating against the
17 employee because the employee has made any complaint to his
18 employer, to the commissioner, the director or to their authorized
19 representatives, or to a representative of the employee, that he has
20 not been paid wages in accordance with the provisions of this act,
21 or because such employee has caused to be instituted or is about to
22 cause to be instituted any proceeding under or related to this act, or
23 because such employee has testified or is about to testify in any
24 such proceeding, or because such employee has served or is about
25 to serve on a wage board, or because the employee has informed
26 any ²~~person~~ ²employee of the employer ²about rights under State
27 laws regarding wages and hours of work, shall be guilty of a
28 disorderly persons offense and shall, upon conviction ²~~therefor~~
29 for a first violation, be fined not less than ¹~~\$100~~ ¹\$500 nor more
30 than \$1,000 ¹or by imprisonment for not less than 10 nor more than
31 90 days or by both the fine and imprisonment and, upon conviction
32 for a second ²or subsequent ²violation, be punished by a fine of not
33 less than \$1,000 nor more than \$2,000 or by imprisonment for not
34 less than 10 nor more than 100 days or by both the fine and
35 imprisonment. ²~~1~~ ²Upon conviction for a third or subsequent
36 violation, an employer shall be guilty of a crime of the fourth
37 degree and be punished by a fine of not less than \$2,000 nor more
38 than \$10,000 or by imprisonment for up to 18 months or by both the
39 fine and imprisonment. ¹ Such ²~~The~~ ²employer shall ²also be
40 required, as a condition of such judgment of conviction, to offer
41 reinstatement in employment to ²~~any such~~ ²the discharged
42 employee ²~~, unless the reinstatement is prohibited by law,~~ ²and to
43 correct any such discriminatory action, and also to pay to any such
44 employee in full, all wages lost as a result of such discharge or
45 discriminatory action and an additional amount of liquidated
46 damages equal to ²not more than ²200 percent of the wages ²~~due~~
47 lost, under penalty of contempt proceedings for failure to comply
48 with such requirement. Taking an adverse action against an
49 employee within ninety days of the employee filing a complaint

1 with the commissioner², or a claim or action being brought by or on
2 behalf of the employee in a court of competent jurisdiction,² for a
3 violation of P.L.1966, c.113 (C.34:11-56a et seq.) shall ²[raise a
4 presumption] be considered presumptive evidence² that the
5 ²employer's² action was ²[a discriminatory action] knowingly²
6 taken in retaliation²], which may be rebutted only by clear and
7 convincing evidence that the action was taken for other,
8 permissible, reasons] against the employee². An employee
9 complaint or other communication need not make explicit reference
10 to any section or provision of State law regarding wages or hours
11 worked to trigger the protections of this section.

12 b. As an alternative to or in addition to any other sanctions
13 provided by law for violations of P.L.1966, c.113 (C.34:11-56a et
14 seq.), when the Commissioner of Labor and Workforce
15 Development finds that an employer has violated that act, or taken
16 any ²[discriminatory] retaliatory² action against the employee in
17 violation of subsection a. of this section, the commissioner is
18 authorized to assess and collect administrative penalties, up to a
19 maximum of \$250 for a first violation and up to a maximum of
20 \$500 for each subsequent violation, specified in a schedule of
21 penalties to be promulgated as a rule or regulation by the
22 commissioner in accordance with the "Administrative Procedure
23 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the
24 amount of the penalty imposed because of a violation, the
25 commissioner shall consider factors which include the history of
26 previous violations by the employer, the seriousness of the
27 violation, the good faith of the employer and the size of the
28 employer's business. No administrative penalty shall be levied
29 pursuant to this section unless the Commissioner of Labor and
30 Workforce Development provides the alleged violator with
31 notification of the violation and of the amount of the penalty by
32 certified mail and an opportunity to request a hearing before the
33 commissioner or his designee within 15 days following the receipt
34 of the notice. If a hearing is requested, the commissioner shall
35 issue a final order upon such hearing and a finding that a violation
36 has occurred. If no hearing is requested, the notice shall become a
37 final order upon expiration of the 15-day period. Payment of the
38 penalty is due when a final order is issued or when the notice
39 becomes a final order. Any penalty imposed pursuant to this
40 section may be recovered with costs in a summary proceeding
41 commenced by the commissioner pursuant to ["the penalty
42 enforcement law" (N.J.S.2A:58-1 et seq.)] the "Penalty
43 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
44 Any sum collected as a fine or penalty pursuant to this section shall
45 be applied toward enforcement and administration costs of the
46 Division of Workplace Standards in the Department of Labor and
47 Workforce Development.
48 (cf: P.L.1991, c.205, s.22)

1 ¹**[5.] 4.**¹ Section 26 of P.L.1966, c.113 (C.34:11-56a25) is
2 amended to read as follows:
3 26. If any employee is paid by an employer less than the
4 minimum fair wage to which **[such]** the employee is entitled under
5 the provisions of **[this act]** P.L.1966, c.113 (C.34:11-56a et seq.) or
6 by virtue of a minimum fair wage order **[such]**², or suffers a loss of
7 wages or other damages because of a retaliatory action by the
8 employer in violation of the provisions of section 24 of P.L.1966,
9 c.113 (C.34:11-56a24)², the employee may recover in a civil action
10 the full amount of **[such]** that minimum wage less any amount
11 actually paid to him or her by the employer **[together with]**², or any
12 wages lost due to the retaliatory action,² and an additional amount
13 equal to 200 percent of the amount of the unpaid minimum wages
14 ²or wages lost due to retaliatory action² as liquidated damages, plus
15 costs and **[such]** reasonable attorney's fees as **[may be allowed]**
16 determined by the court, **[and any]** except that if there is an
17 agreement of the employee to accept payment of the unpaid wages
18 or compensation supervised by the commissioner pursuant to
19 section 24 of P.L.1966, c.113 (C.34:11-56a23) or R.S.34:11-58, the
20 liquidated damages shall be equal to 200 percent of wages that were
21 due prior to the supervised payment. ²In a case of retaliation
22 against an employee in violation of the provisions of section 24 of
23 P.L.1966, c.113 (C.34:11-56a24), the employer shall also be
24 required to offer reinstatement in employment to the discharged
25 employee, and take other actions as needed to correct the retaliatory
26 action. For purposes of this section, an employer taking an adverse
27 action against an employee within 90 days of the employee filing a
28 complaint with the commissioner or a claim or action being brought
29 by or on behalf of the employee in a court of competent jurisdiction
30 for a violation of P.L.1966, c.113 (C.34:11-56a et seq.) shall raise a
31 presumption that the employer's action was taken in retaliation
32 against the employee, which presumption may be rebutted only by
33 clear and convincing evidence that the action was taken for other,
34 permissible, reasons.² Any agreement between **[such]** the
35 employee and the employer to work for less than **[such]** the
36 minimum fair wage shall be no defense to the action. An employee
37 shall be entitled to maintain **[such]** the action for and on behalf of
38 himself or other employees similarly situated, and **[such]** the
39 employee and employees may designate an agent or representative
40 to maintain **[such]** the action for and on behalf of all employees
41 similarly situated. The employee may bring the action to recover
42 unpaid minimum wages², or wages lost due to retaliatory action, or
43 other appropriate relief, including reinstatement and payment of
44 damages² pursuant to this section^{2, 2} in the Superior Court, and may
45 bring the action in the Division of Small Claims of the Superior
46 Court, Law Division, Special Civil Part if the sum of the amount of
47 unpaid minimum wages ²or lost wages² and the amount of

1 liquidated damages does not exceed the jurisdictional limits of the
2 Division of Small Claims.

3 At the request of any employee paid less than the minimum wage
4 to which **【such】** the employee was entitled under the provisions of
5 **【this act】** P.L.1966, c.113 (C.34:11-56a et seq.) or under an order,
6 the commissioner may take an assignment of the wage claim in trust
7 for the assigning employee and may bring any legal action
8 necessary to collect the claim, and the employer shall be required to
9 pay to the employee the unpaid wages and liquidated damages equal
10 to ²not more than² 200 percent the amount of the unpaid wages and
11 pay to the commissioner the costs and **【such】** reasonable attorney's
12 fees as **【may be allowed】** determined by the court.
13 (cf: P.L.1966, c.113, s.26)
14

15 ¹**【6.】** 5.¹ Section 1 of P.L.1967, c.216 (C.34:11-56a25.1) is
16 amended to read as follows:

17 1. No claim for unpaid minimum wages, unpaid overtime
18 compensation, ²unlawful discharge or other discriminatory acts
19 taken in retaliation against the employee.² or other damages under
20 this act shall be valid with respect to any such claim which has
21 arisen more than **【2】** six years prior to the commencement of an
22 action for the recovery thereof. In determining when an action is
23 commenced, the action shall be considered to be commenced on the
24 date when a complaint is filed with the Commissioner of the
25 Department of Labor and **【Industry】** Workforce Development or
26 the Director of **【the】** Wage and Hour **【Bureau】** Compliance, and
27 notice of such complaint is served upon the employer; or, where an
28 audit by the Department of Labor and **【Industry】** Workforce
29 Development discloses a probable cause of action for unpaid
30 minimum wages, unpaid overtime compensation, or other damages,
31 and notice of such probable cause of action is served upon the
32 employer by the Director of **【the】** Wage and Hour **【Bureau】**
33 Compliance; or where a cause of action is commenced in a court of
34 appropriate jurisdiction.

35 (cf: P.L.1967, c.216, s.1)
36

37 ¹**【7.】** 6.¹ R.S.34:11-57 is amended to read as follows:

38 34:11-57. As used in this article:

39 "Commissioner" means the Commissioner of Labor and
40 **【Industry】** Workforce Development or any person or persons in the
41 department designated in writing by him for the purposes of this
42 article.

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

47 "Department" means the Department of Labor and Workforce
48 Development.

1 "Employee" means any natural person who works for another for
2 hire.

3 "Employer" means any person, partnership, firm or corporation
4 employing another for hire.

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

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

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

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

25

26 ¹**[8.] 7.**¹ R.S.34:11-58 is amended to read as follows:

27 34:11-58. a. An employee may file a claim for wages against
28 an employer under this section or any of the other State wage and
29 hours laws for wages owed related to work performed², including
30 but not limited to wages owed related to unpaid minimum wages,
31 unpaid overtime compensation, wages lost because of unlawful
32 discharge or other discriminatory acts taken in retaliation against
33 the employee,² up to six years prior to the date the claim for wages
34 is filed.

35 b. An employer found to owe an employee wages shall pay the
36 employee the wages owed plus liquidated damages equal to ²not
37 more than² 200% of the wages owed, exclusive of any costs or fees.

38 c. The commissioner is authorized and empowered to
39 investigate any claim for wages due an employee and in such
40 investigation may summon the defendant, subpoena witnesses,
41 administer oaths, take testimony and shall upon such proceeding
42 make a decision or award **[**when the sum in controversy, exclusive
43 of costs, does not exceed \$30,000.00**]** ¹when the sum in
44 controversy, exclusive of costs, does not exceed \$50,000¹.

45 Such decision or award shall be a judgment when a certified
46 copy thereof is filed with the Superior Court.

47 Such judgment shall be entered in the same manner and have the
48 same effect and be subject to the same proceedings as are

1 judgments rendered in suits duly heard and determined by courts of
2 competent jurisdiction.

3 d. Upon an investigation of a wage claim initiated pursuant to
4 this section or any of the other State wage and hours laws, if an
5 employer fails to provide sufficient employee records, as required
6 to be kept under any State wage and hour laws, there shall be a
7 rebuttable presumption that the employee worked for the employer
8 for the period of time and for the amount of wages as alleged in the
9 wage claim. ¹The rebuttable presumption shall not apply to an
10 employer that can demonstrate it does not have sufficient employee
11 records as a result of record destruction due to a natural disaster. ¹

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

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

31 (1) inform the employer ²[of] that² the ²[commissioner's
32 intention to] commissioner may² conduct an audit of the employer
33 or any successor firm of the employer pursuant to section 2 of
34 P.L.2009, c.194 (C.34:1A-1.12); and

35 (2) notify the Division of Taxation in the Department of the
36 Treasury of the decision and ²may² recommend that the division
37 conduct an audit of the employer to ensure the proper withholding
38 and payment of payroll and other taxes by the employer.

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

45 (cf: P.L.2006, c.25, s.1)

46
47 ¹[9.] ¹8.¹ (New section) a. If an employer fails to comply with
48 a final determination of the commissioner or a judgment of a court,
49 including a small claims court, made under the provisions of State

1 wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40-2),
2 to pay an employee any wages owed or damages awarded within ten
3 days of the time that the determination or judgement requires the
4 payment, the commissioner may do either or both of the following:

5 (1) issue, in the manner provided in subsection b. of section 2 of
6 P.L.2009, c.194 (C.34:1A-1.12), a written determination directing
7 any appropriate agency to suspend one or more licenses held by the
8 employer or any successor firm of the employer until the employer
9 complies with the determination or judgement; or

10 (2) issue a stop work order against the violators requiring the
11 cessation of all business operations of the violator. The stop work
12 order may only be issued against the individual or entity found to be
13 in violation, and only as to the specific place of business or
14 employment for which the violation exists. The stop work order
15 shall be effective when served upon the violator or at a place of
16 business or employment by posting a copy of the stop work order in
17 a conspicuous location at the place of business or employment. The
18 stop work order shall remain in effect until the commissioner issues
19 an order releasing the stop work order upon a finding that the
20 violation has been corrected. As a condition of release of a stop-
21 work order under this section, the commissioner may require the
22 employer against whom the stop-work order had been issued to file
23 with the department periodic reports for a probationary period of
24 two years.

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

31 c. Any employee affected by a stop work order issued pursuant
32 to this section shall be paid by the employer for the first ten days of
33 work lost because of the stop work order.

34 d. A rebuttable presumption that an employer has established a
35 successor entity shall arise if the two share at least ¹~~three~~ two¹ of
36 the following capacities or characteristics:

37 (1) perform similar work ¹within the same geographical area¹;

38 (2) occupy the same premises;

39 (3) have the same telephone or fax number;

40 (4) have the same email address or Internet website;

41 (5) ¹~~perform work in the same geographical area;~~

42 (6) ¹~~employ substantially the same work force~~, administrative
43 employees, or both¹;

44 (7) utilize the same tools ¹~~and~~, facilities, or¹ equipment;

45 (8) employ or engage the services of any person or persons
46 involved in the direction or control of the other; or

47 (9) list substantially the same work experience.

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

17 b. This section shall not be interpreted as:

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

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

30 c. As used in this section:

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

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

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

46

47 ¹**[11.] 10.**¹ (New section) Each employer shall provide each
48 current employee and each newly hired employee of the employer, a
49 written copy of the statement produced by the department pursuant

1 to ²[subsection c. of]² section ²[12] 11² of P.L. , c. (C.)
2 (pending before the Legislature as this bill) of the employee's rights
3 under the provisions of State wage and hour laws and the provisions
4 of section 10 of P.L.1999, c.90 (C.2C:40A-2), with an explanation
5 of how to file a claim or take an action pursuant to those laws.
6

7 ¹[12.] 11.¹ (New section) The department, for the purpose of
8 supporting the enforcement of the provisions of State wage and
9 hour laws and the provisions of section 10 of P.L.1999, c.90
10 (C.2C:40A-2), ²[shall:

11 a.] may² contract with community-based organizations and legal
12 services organizations to disseminate information to day laborers,
13 migrant laborers, temporary laborers, or any other type of employee
14 concerning the protections afforded by State wage and hour laws
15 and section 10 of P.L.1999, c.90 (C.2C:40A-2), and the process by
16 which an individual may take actions under those laws²];

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

22 c.] and shall² produce, and make available to the public on the
23 website of the department ²in printable form², a statement of
24 employee rights under the provisions of State wage and hour laws
25 and the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2),
26 with an explanation of how to file a claim or take an action pursuant
27 to those laws.

28 The contracts entered into between the department and
29 community-based organizations and legal services organizations
30 pursuant to this section shall require that the organizations make all
31 services accessible to persons with limited English proficiency
32 ²[and shall provide that, in any case in which the community-based
33 or legal services organization assists or represents employees
34 pursuant to subsection b. of this section, 50 percent of any fees or
35 penalties collected by the department shall be paid to the
36 organization for services provided pursuant to contracts entered into
37 pursuant to this section, and that]. Any² payment ²made to an
38 organization under a contract² shall be regarded as an enforcement
39 and administrative cost of the Division of Workplace Standards of
40 the department.

41 The department, and any community-based organization or legal
42 services organization contracting with the department pursuant to
43 this section, shall provide any individual seeking assistance to file a
44 complaint or take an action regarding unpaid wages with a
45 description of all of the applicable remedies available to the
46 individual under State wage and hour laws and section 10 of
47 P.L.1999, c.90 (C.2C:40A-2), including the individual's right to
48 obtain liquidated damages, and that that right to damages is waived

1 if the individual agrees to accept payment of the unpaid wages
2 supervised by the commissioner.

3
4 ¹~~13.~~ 12.¹ (New section) a. The commissioner, in consultation
5 with the Administrative Director of the Courts and the Attorney
6 General, shall compile and prominently place on a website,
7 maintained by the department and available to the public, an annual
8 report evaluating the effectiveness and efficiency of the
9 enforcement and administration of wage claims and wage
10 collections. The report shall include, but not be limited to:

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

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

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

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

29 (1) the name and address of the employer;

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

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

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

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

41

42 ²13. (New section) a. A person commits the crime of pattern of
43 wage nonpayment if the person knowingly commits an act that
44 violates the provisions of N.J.S.2C:40A-2, N.J.S.2C:20-2 if the
45 property stolen consists of compensation the employer failed to
46 provide to an employee as required under the provisions of any
47 State wage and hour law as defined in R.S.34:11-57, subsection a.
48 of section 10 of P.L.1965, c.173 (C.34:11-4.10), or subsection a. of
49 section 25 of P.L.1966, c.113 (C.34:11-56a24), if the person has, on

1 two or more prior occasions, been convicted of a violation of the
2 provisions of any of those laws. It shall not be a defense that the
3 violations were not part of a common plan or scheme, or did not
4 have similar methods of commission.

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

16 c. An employer found to be in violation of this section shall be
17 deemed to have caused loss to the employees in the amount by
18 which the employees were paid less than the full wages agreed upon
19 or required by law and shall be subject to the provisions of
20 N.J.S.2C:43-3 regarding fines and restitution to victims and be
21 subject to other pertinent provisions of Title 2C of the New Jersey
22 Statutes, including, but not limited to, N.J.S.2C:43-4, 2C:43-6 and
23 2C:44-1.²

24
25 ¹[14.] ²[13.¹] 14.² This act shall take effect immediately²,
26 except that section 13 shall take effect on the first day of the third
27 month following enactment².