

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1790

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 2019

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1790, with committee amendments.

This bill, as amended assists workers aggrieved by certain violations of laws regarding the payment of wages by strengthening enforcement procedures, remedies and a variety of criminal, civil and administrative sanctions against the violators.

Under the bill, as amended, upon conviction for a first violation, a employer 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 violation, be punished by a fine of not less than \$1,000 nor more than \$2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment. Upon conviction for a third or subsequent violation, an employer shall be guilty of a crime of the fourth degree and be punished by a fine of not less than \$2,000 nor more than \$10,000 or by imprisonment for up to 18 months or by both the fine and imprisonment.

Additionally, under the bill, a violator can be required to pay the employee wages owed, plus liquidated damages equal to 200% of the wages owed in a civil action brought by the employee. The bill also provides that an employer who is found to have retaliated against an employee for bringing a claim under the statute commits a disorderly persons offense and is liable to the employee for wages lost because of the retaliation plus damages equal to 200% of those wages.

In addition to its enhancements of criminal procedures and sanctions, the bill expands the enforcement provisions available to the Commissioner of Labor and Workforce Development and the remedies available to aggrieved workers.

The bill permits a worker to file a claim with the commissioner for wages owed to the worker related to work performed up to six years prior to the filing of the claim. An employer found to owe wages must pay the employee the wages owed plus liquidated damages equal to 200% of the owed wages. If an employer fails to provide the required employee records there is a rebuttable presumption that the employer owes the amount of wages alleged. As amended, the bill provides that an employer that does not have sufficient employee records due to

record destruction as a result of a natural disaster is not subject to the 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.

Upon issuing a decision finding wages due to a worker are equal to or greater than \$5,000, the commissioner must inform the employer that the commissioner will 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 notify the Division of Taxation of the decision and recommend that the division conduct an audit of the employer to ensure the proper withholding and payment of payroll and other taxes.

The bill further enhances enforcement procedures and remedies by extending certain remedies currently available to workers who are victims of violations of the State's minimum wage law to workers who are victims of violations of the State's wage payment laws. Specifically, the bill extends the remedies provided to employees by the minimum wage law in cases of employer retaliation to cover employer retaliation under the wage payment law, and provides the same opportunity for workers aggrieved by violations of the wage payment law to bring a civil action as workers are provided for violations of the minimum wage law.

In addition, the bill provides the following two new remedies for violations of both the wage payment law and the minimum wage law:

1. The employee may bring the action in small claims court if the unpaid wages and damages do not exceed court jurisdictional limits; and
2. An employee who prevails in a civil action may recover liquidated damages equal to 200% of the unpaid wages.

The bill also amends section 2 of P.L.2009, c.194 (C.34:1A-1.12), which is the law that directs the commissioner, in the case of employers who fail to maintain required records and make required tax, benefit and wage payments, to conduct audits of employers and suspend or revoke business licenses of employers who are found in subsequent audits to have continued the violations. The bill amends that law to require the commissioner to use that law's remedies when notified by the Attorney General of a conviction under section 10 of P.L.1999, c.90 (C.2C:40A-2). In addition, the bill provides that if an employer fails to comply with a final determination of the commissioner or a court judgement to pay wages owed or related damages within 10 days, the commissioner may order license suspensions, or issue a stop work order, until the failure is corrected.

The bill makes a client employer and a labor contractor providing workers to the client employer subject to joint and several liability for violations of wage and hour laws. The bill provides that nothing in the bill shall be interpreted as 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, or restricting or limiting the provisions in contracts between client employers and labor contractors regarding the recovery of expenses.

Because wage payment violations especially impact vulnerable employees such as day laborers and immigrants, who often suffer from low wages and the fear of retaliation, the bill's definitions of "employee" reaffirm that the protections of the State's wage and hour laws apply to all employees, with no exclusions based on citizenship status.

The bill directs the Department of Labor and Workforce Development to contract with community-based and legal services organizations to disseminate information to workers and assist workers aggrieved by violations of State wage and hour laws. The bill requires that the contracts provide that the organizations make all services accessible to persons with limited English proficiency and that, in any case in which the community-based or legal services organization assists or represents employees, 50% of any fees or penalties collected by the department be paid to the organization.

The bill requires employers to provide current and newly hired employees a written copy of the statement produced by the department of the employee's rights under the bill, with an explanation of how to file a claim or take other actions with regard to wage violations.

The bill requires the commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, to produce an annual report on the enforcement of wage and hour laws with recommendations to improve enforcement, and place on a website 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 during the preceding period of not less than 12 months.

The bill exempts violations of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), and "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), from the remedies of the bill. Finally, the bill expressly provides that violations of the building services prevailing wage law, P.L.2005, c.379 (C.34:11-56.58 et seq.), are subject to the remedies of the bill.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) omit section 1 in its entirety, which would have added certain provisions of the bill to the section of criminal law concerning the failure to pay wages and benefits;

(2) increase the fine under the labor laws for a first violation from \$100 to a minimum of \$500, or by imprisonment for at least 10 days, or both, and additional penalties for subsequent violations;

(3) change timeframe for continuing violations from recurring daily to weekly;

(4) limit investigations by the department to proceedings wherein the sum in controversy does not exceed \$50,000;

(5) modify the definition of a successor entity of an employer;

(6) provide that an employer that does not have sufficient employee records due to record destruction as a result of a natural disaster is not subject to the 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; and

(7) renumber the sections accordingly and make minor technical changes.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill will result in indeterminate annual increases in administrative, enforcement, and incarceration expenditures to the State; and indeterminate annual increases in State revenue collected from certain new and expanded criminal and administrative penalties.