

P.L. 2021, CHAPTER 165, *approved July 8, 2021*  
Assembly, No. 5890 (*First Reprint*)

1 AN ACT concerning enforcement of various laws regarding  
2 employee misclassification and stop-work orders, and amending  
3 various parts of the statutory law.

4

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

7

8 1. Section 1 of P.L.2019, c.194 (C.34:1A-1.11) is amended to  
9 read as follows:

10 1. As used in this act:

11 "Agency" means any agency, department, board or commission  
12 of this State, or of any political subdivision of this State, that issues  
13 a license for purposes of operating a business in this State.

14 "Commissioner" means the Commissioner of Labor and  
15 Workforce Development, and shall include any designee, authorized  
16 representative, or agent acting on behalf of the commissioner.

17 "License" means any agency permit, certificate, approval,  
18 registration, charter or similar form of authorization that is required  
19 by law and that is issued by any agency for the purposes of  
20 operating a business in this State, and includes, but is not limited to:

21 (1) A certificate of incorporation pursuant to the "New Jersey  
22 Business Corporation Act," N.J.S.14A:1-1 et seq.;

23 (2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.;

24 (3) A statement of qualification or a statement of foreign  
25 qualification pursuant to the "Uniform Partnership Act (1996),"  
26 P.L.2000, c.161 (C.42:1A-1 et al.);

27 (4) A certificate of limited partnership or a certificate of  
28 authority pursuant to the "Uniform Limited Partnership Law  
29 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

30 (5) A certificate of formation or certified registration pursuant  
31 to the "New Jersey Limited Liability Company Act," P.L.1993,  
32 c.210 (C.42:2B-1 et seq.); and

33 (6) Any license, certificate, permit or registration pursuant to  
34 R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey  
35 Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of  
36 P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.);  
37 section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of  
38 P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor  
39 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

40 "State wage, benefit and tax laws" means:

41 (1) P.L.1965, c.173 (C.34:11-4.1 et seq.);

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Assembly AAP committee amendments adopted June 16, 2021.

- 1 (2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150  
2 (C.34:11-56.25 et seq.);
- 3 (3) The "New Jersey State Wage and Hour Law," P.L.1966,  
4 c.113 (C.34:11-56a et seq.);
- 5 (4) The workers' compensation law, R.S.34:15-1 et seq.;
- 6 (5) The "unemployment compensation law," R.S.43:21-1 et seq.;
- 7 (6) The "Temporary Disability Benefits Law," P.L.1948, c.110  
8 (C.43:21-25 et al.);
- 9 (7) P.L.2008, c.17 (C.43:21-39.1 et al.); **[and]**
- 10 (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et  
11 seq.; and
- 12 (9) P.L.2018, c.10 (C.34:11D-1 et seq.).
- 13 (cf: P.L.2009, c.194, s.1)
- 14

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

17 2. a. (1) If the commissioner determines that an employer has  
18 **[failed, for one or more of its employees, to maintain and report**  
19 **every record regarding wages, benefits and taxes which the**  
20 **employer is required to maintain and report pursuant to State wage,**  
21 **benefit and tax laws, as defined in section 1 of this act, and has, in**  
22 **connection with that failure to maintain or report the records, failed**  
23 **to pay wages, benefits, taxes or other contributions or assessments**  
24 **as required by those laws] violated any State wage, benefit and tax**  
25 **law, including but not limited to a violation of R.S.34:15-79, or**  
26 **failed to meet obligations required by R.S.43:21-7 or R.S.43:21-14,**  
27 **or violated any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or**  
28 **P.L.1989, c.293 (C.34:15C-1 et al.)**, the commissioner shall, as an  
29 alternative to, or in addition to, any other actions taken in the  
30 enforcement of those laws, notify the employer of the determination  
31 and have an audit of the employer and any successor firm of the  
32 employer conducted not more than 12 months after the  
33 determination.

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

41 b. If, in an audit conducted pursuant to subsection a. of this  
42 section, the commissioner determines that the employer or any  
43 successor firm to the employer has continued in its failure to  
44 maintain or report records as required by those laws or continued in  
45 its failure to pay wages, benefits, taxes or other contributions or  
46 assessments as required by those laws, or if the commissioner is  
47 notified pursuant to subsection g. of this section of a conviction of

1 the employer and the offense resulting in the conviction occurred  
2 subsequent to an audit conducted pursuant to subsection a. of this  
3 section, the commissioner:

4 (1) May, after affording the employer or successor firm notice  
5 and an opportunity for a hearing in accordance with the provisions  
6 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
7 1 et seq.), issue a written determination directing any appropriate  
8 agency to suspend any one or more licenses that are held by the  
9 employer or successor firm, for a period of time determined by the  
10 commissioner. In determining the length of a suspension, the  
11 commissioner shall consider any of the following factors which are  
12 relevant:

13 (a) The number of employees for which the employer or  
14 successor firm failed to maintain or report required records and pay  
15 required wages, benefits, taxes or other contributions or  
16 assessments;

17 (b) The total amount of wages, benefits, taxes or other  
18 contributions or assessments not paid by the employer or successor  
19 firm;

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

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

23 (e) The duration of the violation;

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

26 (g) Any prior misconduct by the employer or successor firm;  
27 and

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

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

32 c. If, in the subsequent audit or inspection conducted pursuant  
33 to subsection b. of this section, the commissioner determines that  
34 the employer or successor firm has continued in its failure to  
35 maintain or report records as required pursuant to State wage,  
36 benefit and tax laws, as defined in section 1 of this act, and  
37 continued in its failure to pay wages, benefits, taxes or other  
38 contributions or assessments as required by those laws, or if the  
39 commissioner is notified pursuant to subsection g. of this section of  
40 a conviction of the employer for an offense occurring after the audit  
41 conducted pursuant to subsection b. of this section, the  
42 commissioner, after affording the employer or successor firm notice  
43 and an opportunity for a hearing in accordance with the provisions  
44 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
45 1 et seq.), shall issue a written determination directing any  
46 appropriate agency to permanently revoke any one or more licenses  
47 that are held by the employer or any successor firm to the employer  
48 and that are necessary to operate the employer or successor firm.

1 d. Upon receipt of any written determination of the  
2 commissioner directing an agency to suspend or revoke a license  
3 pursuant to this section, and notwithstanding any other law, the  
4 agency shall immediately suspend or revoke the license.

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

23 f. If, in the course of an audit or inspection conducted pursuant  
24 to this section, the commissioner discovers that an employee of the  
25 employer or of any successor firm of the employer has failed to  
26 provide compensation to the employee as required under any of the  
27 State wage and hour laws as defined in R.S.34:11-57, then the  
28 commissioner shall initiate a wage claim on behalf of the employee  
29 pursuant to R.S.34:11-58.

30 g. Upon the conviction of an employer under subsection a. of  
31 section 10 of P.L.1999, c.90 (C.2C:40A-2), section 13 of P.L.2019,  
32 c.212 (C.34:11-58.6), subsection a. of section 10 of P.L.1965, c.173  
33 (C.34:11-4.10), subsection a. of section 25 of P.L.1966, c.113  
34 (C.34:11-56a24), or N.J.S.2C:20-2 if the property stolen consists of  
35 compensation the employer failed to provide to an employee under  
36 any State wage and hour law as defined in R.S.34:11-57, the  
37 prosecutor or the court shall notify the commissioner of the  
38 employer's conviction.

39 h. In the alternative to proceedings under the "Administrative  
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in accordance  
41 with the provisions of subsection b. of this section, and in addition  
42 to any other actions taken in the enforcement of the laws violated  
43 by any employer, the commissioner shall have the authority, to be  
44 exercised in the commissioner's sole discretion, to bring  
45 enforcement actions for any violation of any State wage, benefit and  
46 tax law, including but not limited to a violation of R.S.34:15-79, or  
47 a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-  
48 14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-

1 21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), in the Office of  
2 Administrative Law or in the Superior Court for the county in  
3 which the violation occurred. When the commissioner, including  
4 any of the commissioner's authorized representatives in the Office  
5 of the Attorney General, brings an action in the Office of  
6 Administrative Law or Superior Court which seeks relief on behalf  
7 of any individual for any of the above violations, communications  
8 between members of the Attorney General's office and that  
9 individual shall be privileged as would be a communication  
10 between an attorney and a client.

11 i. In any enforcement action brought under subsection h. of  
12 this section, the commissioner, including any of the commissioner's  
13 authorized representatives in the Office of the Attorney General,  
14 may initiate the action by making, signing, and filing a verified  
15 complaint against the employer. If the action is brought by the  
16 commissioner in Superior Court, a jury trial may be requested upon  
17 the application of any party. If the commissioner is a prevailing  
18 plaintiff in the action, any and all remedies available by law shall be  
19 available on behalf of any named or unnamed victims as if the  
20 claims were brought directly by the victims. In addition to any  
21 remedies sought on behalf of the named or unnamed victims, the  
22 commissioner shall be entitled to seek any fines, penalties or  
23 administrative assessments authorized by law, including but not  
24 limited to penalties for misclassification set forth in section 1 of  
25 P.L.2019, c.373 (C.34:1A-1.18). If the suit seeks relief for one or  
26 more unnamed members of a class, the commissioner shall have the  
27 discretion to settle the suit on the terms the commissioner deems  
28 appropriate. If the commissioner is a prevailing plaintiff, the court  
29 shall award reasonable attorney's fees and litigation and  
30 investigation costs.

31 j. At any time after the filing of any verified complaint under  
32 subsection i. of this section, or whenever it appears to the  
33 commissioner that an employer has engaged in, is engaging in, or is  
34 about to engage in, any violation of a State wage, benefit or tax law,  
35 including a violation of R.S.34:15-79 or any failure to meet  
36 obligations required by R.S.43:21-7 or R.S.43:21-14, or has  
37 violated any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or  
38 P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner may proceed  
39 against the employer in a summary manner in the Superior Court of  
40 New Jersey to obtain an injunction prohibiting the employer from  
41 continuing or engaging in the violation or doing any acts in  
42 furtherance of the violation, to compel compliance with any of the  
43 provisions of this Title, or to prevent violations or attempts to  
44 violate any of those provisions, or attempts to interfere with or  
45 impede the enforcement of those provisions or the exercise or  
46 performance of any power or duty under this Title. Prospective  
47 injunctive relief against an employer shall also be available as a

1 remedy to the commissioner as a prevailing plaintiff in any  
2 enforcement action under subsection i. of this section.

3 (cf: P.L.2019, c.212, s.1)

4

5 3. Section 1 of P.L.2019, c.372 (C.34:1A-1.17) is amended to  
6 read as follows:

7 1. a. The Commissioner of Labor and Workforce Development  
8 and any agent of the commissioner, upon receipt of a complaint or  
9 through routine investigation for a violation of any State wage, benefit  
10 and tax law, including but not limited to a violation of R.S.34:15-79,  
11 or a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-  
12 14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1  
13 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), is authorized to enter,  
14 during usual business hours, the place of business or employment of  
15 any employer of the individual to determine compliance with those  
16 laws, and for that purpose may examine payroll and other records and  
17 interview employees, call hearings, administer oaths, take testimony  
18 under oath and take interrogatories and oral depositions.

19 b. The commissioner may issue subpoenas for the attendance of  
20 witnesses and the production of books and records. Any **【**employer or  
21 agent of the employer who willfully **】** entity that fails to furnish **【**time  
22 and wage records as required by law to **】** information required by to the  
23 commissioner or agent of the commissioner upon request, or who  
24 refuses to admit the commissioner or agent to the place of employment  
25 of the employer, or who hinders or delays the commissioner or agent  
26 in the performance of duties in the enforcement of this section, may be  
27 fined not less than \$1,000 and shall be guilty of a disorderly persons  
28 offense. Each day of the failure to furnish the records to the  
29 commissioner or agent shall constitute a separate offense, and each  
30 day of refusal to admit, of hindering, or of delaying the commissioner  
31 or agent shall constitute a separate offense.

32 In addition to the foregoing fines, and in addition to or as an  
33 alternative to any criminal proceedings, if an entity fails to comply  
34 with any subpoena lawfully issued, or upon the refusal of any witness  
35 to testify to any matter regarding which the witness may be lawfully  
36 interrogated, the commissioner may apply to the Superior Court to  
37 compel obedience by proceedings for contempt, in the same manner as  
38 in a failure to comply with the requirements of a subpoena issued from  
39 the court or a refusal to testify in the court.

40 c. (1) If the commissioner determines, after either an initial  
41 determination as a result of an audit of a business or an investigation  
42 pursuant to subsection a. of this section, that an employer is in  
43 violation of any State wage, benefit and tax law, including but not  
44 limited to a violation of R.S.34:15-79, or a failure to meet obligations  
45 required by R.S.43:21-7 or R.S.43:21-14, or for a violation of any  
46 provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293  
47 (C.34:15C-1 et al.), the commissioner may issue a stop-work order

1 against the employer requiring cessation of all business operations of  
2 the employer at **【the specific place of business or employment in**  
3 **which the violation exists】** one or more worksites or across all of the  
4 employer's worksites and places of business. The stop-work order  
5 may be issued only against the employer found to be in violation or  
6 non-compliance. The commissioner shall serve a notification of intent  
7 to issue a stop-work order on the employer at the place of business or,  
8 for a particular employer worksite, at that worksite at least seven days  
9 prior to the issuance of a stop-work order. The order shall be effective  
10 when served upon the employer at the place of business or, for a  
11 particular employer worksite, when served at that worksite. The order  
12 shall remain in effect until the commissioner issues an order releasing  
13 the stop-work order upon finding that the employer has come into  
14 compliance and has paid any penalty deemed to be satisfactory to the  
15 commissioner, or after the commissioner determines, in a hearing held  
16 pursuant to paragraph (2) of this subsection, that the employer did not  
17 commit the act on which the order was based. The stop-work order  
18 shall be effective against any successor entity engaged in the same or  
19 equivalent trade or activity that has one or more of the same principals  
20 or officers as the corporation, partnership, limited liability company, or  
21 sole proprietorship against which the stop-work order was issued. The  
22 commissioner may assess a civil penalty of \$5,000 per day against an  
23 employer for each day that it conducts business operations that are in  
24 violation of the stop-work order. A request for hearing shall not  
25 automatically stay the effect of the order.

26 (2) An employer who is subject to a stop-work order shall, within  
27 72 hours of its receipt of the notification, have the right to appeal to  
28 the commissioner in writing for an opportunity to be heard and contest  
29 the stop-work order.

30 Within seven business days of receipt of the notification from the  
31 employer, the commissioner shall hold a hearing to allow the employer  
32 to contest the issuance of a stop-work order. The department and the  
33 employer may present evidence and make any arguments in support of  
34 their respective positions on the imposition of the misclassification  
35 penalty. If a hearing is not held within seven business days of receipt  
36 of the notification from the employer, an administrative law judge  
37 shall have the authority to release the stop-work order. The  
38 commissioner shall issue a written decision within five business days  
39 of the hearing either upholding or reversing the employer's stop-work  
40 order. The decision shall include the grounds for upholding or  
41 reversing the employer's stop-work order. If the employer disagrees  
42 with the written decision, the employer may appeal the decision to the  
43 commissioner, in accordance with the "Administrative Procedure Act,"  
44 P.L.1968, c.410 (C.52:14B-1 et seq.).

45 If the employer does not request an appeal to the commissioner in  
46 writing, the stop-work order shall become a final order after the  
47 expiration of the 72-hour period. The authority to assess a civil penalty  
48 under paragraph (1) of this subsection shall be in addition to any

1 misclassification penalty assessed under section 1 of P.L.2019, C.373  
2 (C.34:1A-1.18) and all other enforcement provisions or assessments  
3 issued for the employer's violation of any State wage, benefit and tax  
4 law, including but not limited to a violation of R.S.34:15-79, or a  
5 failure to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or  
6 for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et  
7 seq.) or P.L.1989, c.293 (C.34:15C-1 et al.) The commissioner may  
8 '[set] compromise' any civil penalty assessed under this section in an  
9 amount the commissioner determines to be appropriate.

10 Once the stop-work order becomes final, any employee affected by  
11 a stop-work order issued pursuant to this section shall be entitled to  
12 pay from the employer for the first ten days of work lost because of the  
13 stop-work. Upon request of any employee not paid wages, the  
14 commissioner can take assignment of the claim and bring any legal  
15 action necessary to collect all that is due.

16 (3) As an alternative to issuing a stop-work order in accordance  
17 with paragraph (1) of this subsection, if the commissioner determines,  
18 after an investigation pursuant to subsection a. of this section, that an  
19 employer is in violation of R.S.34:15-79, the commissioner may  
20 provide and transfer all details and materials related to the  
21 investigation under this section to the Director of the Division of  
22 Workers' Compensation for any enforcement of penalties or stop-work  
23 orders the director determines are appropriate.

24 d. For purposes of this section:

25 "Employer" means any individual, partnership, association, joint  
26 stock company, trust, corporation, the administrator or executor of the  
27 estate of a deceased individual, or the receiver, trustee, or successor of  
28 any of the same, employing any person in this State. For the purposes  
29 of this subsection the officers of a corporation and any agents having  
30 the management of such corporation shall be deemed to be the  
31 employers of the employees of the corporation. In addition, any  
32 members of a partnership or limited liability company and any agents  
33 having the management of such partnership or limited liability  
34 company shall be deemed to be employers of the employees of the  
35 partnership or limited liability company.

36 "Employee" means any person suffered or permitted to work by an  
37 employer, except a person performing services for remuneration  
38 whose services satisfy the factors set forth in subparagraphs (A),(B),  
39 and (C) of R.S.43:21-19(i)(6).

40 "Employ" means to suffer or permit to work.

41 "State wage, benefit and tax laws" means "State wage, benefit and  
42 tax laws" as defined in section 1 of P.L.2009, c.194 (C.34:1A-1.11).

43 e. Nothing in this section shall preclude an employer from  
44 seeking injunctive relief from a court of competent jurisdiction if the  
45 employer can demonstrate that the stop-work order would be issued or  
46 has been issued in error.

47 (cf: P.L.2019, c.372, s.1)



1       4. Section 2 of P.L.2019, c.158 (C.34:20-7.1) is amended to  
2 read as follows:

3       2. a. The Commissioner of Labor and Workforce Development  
4 and any agent of the commissioner, upon receipt of a complaint or  
5 through a routine investigation for a violation of any **【**wage and  
6 hour law or **】** State wage, benefit and tax law, as defined in section 1  
7 of P.L.2009, c.194 (C.34:1A-1.11), including but not limited to a  
8 violation of R.S.34:15-79, or a failure to meet obligations as  
9 provided in R.S.43:21-7 and R.S.43:21-14, or for a violation of any  
10 provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989,  
11 c.293 (C.34:15C-1 et al.), is authorized to enter, during usual  
12 business hours, the place of business or employment of any  
13 employer of the individual to determine compliance with the wage  
14 and hour laws, R.S.34:15-79, R.S.43:21-7, or R.S.43:21-14, and for  
15 that purpose may examine payroll and other records and interview  
16 employees, call hearings, administer oaths, take testimony under  
17 oath and take interrogatories and oral depositions.

18       b. The commissioner may issue subpoenas for the attendance  
19 of witnesses and the production of books and records. Any  
20 **【**employer or agent of the employer who willfully **】** entity that fails  
21 to furnish **【**time and wage records as required by law to **】**  
22 information required by the commissioner or agent of the  
23 commissioner upon request, or who refuses to admit the  
24 commissioner or agent to the place of employment of the employer,  
25 or who hinders or delays the commissioner or agent in the  
26 performance of duties in the enforcement of this section, may be  
27 fined not less than \$1,000 and shall be guilty of a disorderly persons  
28 offense. Each day of the failure to furnish the time and wage  
29 records to the commissioner or agent shall constitute a separate  
30 offense, and each day of refusal to admit, of hindering, or of  
31 delaying the commissioner or agent shall constitute a separate  
32 offense.

33       In addition to the foregoing fines, and in addition to or as an  
34 alternative to any criminal proceedings, if an entity fails to comply  
35 with any lawfully issued subpoena, or upon the refusal of any  
36 witness to testify to any matter regarding which the witness may be  
37 lawfully interrogated, the commissioner or the commissioner's  
38 designee may apply to the Superior Court to compel obedience by  
39 proceedings for contempt, in the same manner as in a failure to  
40 comply with the requirements of a subpoena issued from the court  
41 or a refusal to testify in the court.

42       c. (1) If the commissioner determines, after either an initial  
43 determination as a result of an audit of a business or an  
44 investigation pursuant to subsection a. of this section, that an  
45 employer is in violation of any **【**wage and hour law or **】** State wage,  
46 benefit and tax law, as defined in section 1 of P.L.2009, c.194  
47 (C.34:1A-1.11), including but not limited to a violation of

1 R.S.34:15-79, or has failed to meet obligations as provided in  
2 R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of  
3 P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-  
4 1 et al.), the commissioner may issue a stop-work order against the  
5 employer requiring cessation of all business operations of the  
6 employer at **【the specific place of business or employment in which**  
7 **the violation exists】** one or more worksites or across all of the  
8 employer's worksites and places of business. The stop-work order  
9 may be issued only against the employer found to be in violation or  
10 non-compliance. If a stop-work order has been issued against a  
11 subcontractor pursuant to this subsection, the general contractor  
12 shall retain the right to terminate the subcontractor from the project.  
13 The order shall be effective when served upon the employer at the  
14 place of business or, for a particular employer worksite, when  
15 served at that worksite. The order shall remain in effect until the  
16 commissioner issues an order releasing the stop-work order upon  
17 finding that the employer has come into compliance and has paid  
18 any penalty deemed to be satisfactory to the commissioner, or after  
19 the commissioner determines, in a hearing held pursuant to  
20 paragraph (2) of this subsection, that the employer did not commit  
21 the act on which the order was based. The stop-work order shall be  
22 effective against any successor entity engaged in the same or  
23 equivalent trade or activity that has one or more of the same  
24 principals or officers as the corporation, partnership, limited  
25 liability company, or sole proprietorship against which the stop-  
26 work order was issued.

27 (2) An employer who is subject to a stop-work order shall have  
28 the right to appeal to the commissioner. The contractor may notify  
29 the Director of the Division of Wage and Hour Compliance of its  
30 request for an opportunity to be heard and contest the stop-work  
31 order in writing within 72 hours of its receipt of the notification. A  
32 request for hearing shall not automatically stay the effect of the  
33 order.

34 Within seven business days of receipt of the notification from the  
35 contractor, the director shall hold a hearing to allow the contractor  
36 to contest the issuance of a **【stop work】** stop-work order. The  
37 director shall permit the contractor to present evidence at the  
38 hearing. If the director fails to hold a hearing within seven business  
39 days of receipt of the notification from the contractor, an  
40 administrative law judge shall have the authority to release the stop-  
41 work order.

42 The director shall issue a written decision within five business  
43 days of the hearing either upholding or reversing the contractor's  
44 stop-work order. The decision shall include the grounds for  
45 upholding or reversing the contractor's stop-work order.

46 If the contractor disagrees with the written decision, the  
47 contractor may appeal the decision to the commissioner, in

1 accordance with the "Administrative Procedure Act," P.L.1968,  
2 c.410 (C.52:14B-1 et seq.).

3 If the employer does not request an appeal to the commissioner  
4 in writing, the stop-work order shall become a final order after the  
5 expiration of the 72-hour period. The authority to assess a civil  
6 penalty under paragraph (1) of this subsection shall be in addition to  
7 any misclassification penalty assessed under this subsection and all  
8 other enforcement provisions or assessments issued for the  
9 employer's violation of any State wage, benefit and tax law,  
10 including but not limited to a violation of R.S.34:15-79, or a failure  
11 to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for  
12 a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.)  
13 or P.L.1989, c.293 (C.34:15C-1 et al.). The commission may  
14 compromise any civil penalty assessed under this section in an  
15 amount the commissioner determines to be appropriate.

16 Once the stop-work order becomes final, any employee affected  
17 by a stop-work order issued pursuant to this section shall be entitled  
18 to pay from the employer for the first ten days of work lost because  
19 of the stop-work order. Upon request of any employee not paid  
20 wages, the commissioner may take assignment of the claim and  
21 bring any legal action necessary to collect all that is due.

22 (3) As an alternative to issuing a stop-work order in accordance  
23 with paragraph (1) of this subsection, if the commissioner  
24 determines, after an investigation pursuant to subsection a. of this  
25 section, that an employer is in violation of R.S.34:15-79, the  
26 commissioner may provide and transfer all details and materials  
27 related to the investigation under this section to the Director of the  
28 Division of Workers' Compensation for any enforcement of  
29 penalties or stop-work orders the director determines are  
30 appropriate.

31 (cf: P.L.2019, c.158, s.2)

32

33 5. Section 11 of P.L.1963, c.150 (C.34:11-56.35) is amended to  
34 read as follows:

35 11. (a) Any employer who willfully hinders or delays the  
36 commissioner in the performance of his duties in the enforcement of  
37 this act, or fails to make, keep, and preserve any records as required  
38 under the provisions of this act, or falsifies any such record, or  
39 refuses to make any such record accessible to the commissioner  
40 upon demand, or fails to timely respond to or furnish records  
41 required by a subpoena issued by the commissioner, or refuses to  
42 furnish a sworn statement of such record or any other information  
43 required for the proper enforcement of this act to the commissioner  
44 upon demand, or pays or agrees to pay wages at a rate less than the  
45 rate applicable under this act or otherwise violates any provision of  
46 this act or of any regulation or order issued under this act shall be  
47 guilty of a disorderly persons offense and shall, upon conviction

1 therefor, be fined not less than \$100.00 nor more than \$1,000 or be  
2 imprisoned for not less than 10 nor more than 90 days, or by both  
3 such fine and imprisonment. Each week, in any day of which a  
4 worker is paid less than the rate applicable to him under this act and  
5 each worker so paid, shall constitute a separate offense. In addition  
6 to the foregoing fines, and in addition to or as an alternative to any  
7 criminal proceedings, if an employer fails to comply with any  
8 lawfully issued subpoena, or on the refusal of any witness to testify  
9 to any matter regarding which the witness may be lawfully  
10 interrogated, the commissioner may apply to the Superior Court to  
11 compel obedience by proceedings for contempt, in the same manner  
12 as in failure to comply with the requirements of a subpoena issued  
13 from the court or a refusal to testify in the court.

14 (b) As an alternative to or in addition to any other sanctions  
15 provided by law for violations of any provision of P.L.1963, c.150  
16 (C.34:11-56.25 et seq.), when the Commissioner of Labor and  
17 Workforce Development finds that an employer has violated that  
18 act, the commissioner is authorized to assess and collect  
19 administrative penalties, up to a maximum of \$2,500 for a first  
20 violation and up to a maximum of \$5,000 for each subsequent  
21 violation, specified in a schedule of penalties to be promulgated as a  
22 rule or regulation by the commissioner in accordance with the  
23 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
24 seq.). When determining the amount of the penalty imposed because  
25 of a violation, the commissioner shall consider factors which  
26 include the history of previous violations by the employer, the  
27 seriousness of the violation, the good faith of the employer and the  
28 size of the employer's business. No administrative penalty shall be  
29 levied pursuant to this section unless the Commissioner of Labor  
30 and 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 issue  
35 a final order upon such hearing and a finding that a violation has  
36 occurred. If no hearing is requested, the notice shall become a final  
37 order upon expiration of the 15-day period. Payment of the penalty  
38 is due when a final order is issued or when the notice becomes a  
39 final order. Any penalty imposed pursuant to this section may be  
40 recovered with costs in a summary proceeding commenced by the  
41 commissioner pursuant to the "Penalty Enforcement Law of 1999,"  
42 P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine  
43 or penalty pursuant to this section shall be applied toward  
44 enforcement and administration costs of the Division of Workplace  
45 Standards in the Department of Labor and Workforce Development.

46 (c) When the Commissioner of Labor and Workforce  
47 Development finds that the employer has violated provisions of  
48 P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may

1 refer the matter to the Attorney General or his designee for  
2 investigation and prosecution. Nothing in this subsection shall be  
3 deemed to limit the authority of the Attorney General to investigate  
4 and prosecute violations of the New Jersey Code of Criminal  
5 Justice, nor to limit the commissioner's ability to refer any matter  
6 for criminal investigation or prosecution.

7 (d) If the commissioner makes an initial determination that an  
8 employer has violated the provisions of P.L.1963, c.150 (C.34:11-  
9 56.25 et seq.) by paying wages at rates less than the rates applicable  
10 under that act, whether or not the commissioner refers the matter to  
11 the Attorney General or other appropriate prosecutorial authority  
12 for investigation or prosecution pursuant to subsection (c) of this  
13 section, the commissioner may immediately issue a stop-work order  
14 to cease all business operations at **every site where the violation**  
15 **has occurred** one or more worksites or across all of the employer's  
16 worksites and places of business. The stop-work order may be  
17 issued only against the employer found to be in violation or non-  
18 compliance. If a stop-work order has been issued against a  
19 subcontractor pursuant to this subsection, the general contractor  
20 shall retain the right to terminate the subcontractor from the project.  
21 The stop-work order shall remain in effect until the commissioner  
22 issues an order releasing the stop-work order upon finding that the  
23 employer has agreed to pay wages at the required rate and has paid  
24 any wages due and any penalty deemed satisfactory to the  
25 commissioner. Once the stop-work order is issued, any employee  
26 affected by a stop-work order issued pursuant to this section shall  
27 be entitled to pay from the employer for the first ten days of work  
28 lost because of the stop-work order. Upon request of any employee  
29 not paid wages, the commissioner can take assignment of the claim  
30 and bring any legal action necessary to collect all that is due. As a  
31 condition for release from a stop-work order, the commissioner may  
32 require the employer to file with the department periodic reports for  
33 a probationary period that shall not exceed two years that  
34 demonstrate the employer's continued compliance with the  
35 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). The  
36 commissioner may assess a civil penalty of \$5,000 per day against  
37 an employer for each day that it conducts business operations that  
38 are in violation of the stop-work order. That penalty shall be  
39 collected by the commissioner in a summary proceeding in  
40 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,  
41 c.274 (C.2A:58-10 et seq.).

42 (cf: P.L.2019, c.158, s.1)

43  
44 6. Section 8 of P.L.2019, c.212 (C.34:11-58.1) is amended to  
45 read as follows:

46 8. a. If an employer fails to comply with a final determination  
47 of the commissioner or a judgment of a court, including a small

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

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

11 (2) issue a **【stop work】** stop-work order against the violators  
12 requiring the cessation of all business operations **【of the violator.**  
13 The stop work order may only be issued against the individual or  
14 entity found to be in violation, and only as to the specific place of  
15 business or employment for which the violation exists **】** at one or  
16 more worksites or across all of the employer's worksites and places  
17 of business. The **【stop work】** stop-work order shall be effective  
18 when served upon the violator or at a place of business or  
19 employment by posting a copy of the **【stop work】** stop-work order  
20 in a conspicuous location at the place of business or employment.  
21 The **【stop work】** stop-work order shall remain in effect until the  
22 commissioner issues an order releasing the **【stop work】** stop-work  
23 order upon a finding that the violation has been corrected. As a  
24 condition of release of a stop-work order under this section, the  
25 commissioner may require the employer against whom the stop-  
26 work order had been issued to file with the department periodic  
27 reports for a probationary period of two years. The commissioner  
28 may assess a civil penalty of \$5,000 per day against an employer for  
29 each day that it conducts business operations that are in violation of  
30 the stop-work order. That penalty shall be collected by the  
31 commissioner in a summary proceeding in accordance with the  
32 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10  
33 et seq.).

34 b. **【Stop work】** Stop-work orders and any penalties imposed  
35 under a **【stop work】** stop-work order against a corporation,  
36 partnership, limited liability corporation, or sole proprietorship shall  
37 be effective against any successor entity that has one or more of the  
38 same principals or officers as the corporation, partnership, or sole  
39 proprietorship against which the **【stop work】** stop-work order was  
40 issued and that is engaged in the same or equivalent trade or  
41 activity.

42 c. Any employee affected by a **【stop work】** stop-work order  
43 issued pursuant to this section shall be paid by the employer for the  
44 first ten days of work lost because of the **【stop work】** stop-work  
45 order.

1 d. A rebuttable presumption that an employer has established a  
2 successor entity shall arise if the two share at least two of the  
3 following capacities or characteristics:

- 4 (1) perform similar work within the same geographical area;
- 5 (2) occupy the same premises;
- 6 (3) have the same telephone or fax number;
- 7 (4) have the same email address or Internet website;
- 8 (5) employ substantially the same work force, administrative  
9 employees, or both;
- 10 (6) utilize the same tools, facilities, or equipment;
- 11 (7) employ or engage the services of any person or persons  
12 involved in the direction or control of the other; or
- 13 (8) list substantially the same work experience.

14 (cf: P.L.2019, c.212, s.8)

15

16 7. This act shall take effect immediately.

17

18

19

20

21 \_\_\_\_\_  
22 Concerns enforcement of employee misclassification and stop-  
work order laws.