

CHAPTER 165

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

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

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

C.34:1A-1.11 Definitions relative to suspension, revocation of certain employer licenses.

1. As used in this act:

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

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

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

- (1) A certificate of incorporation pursuant to the "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq.;
- (2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.;
- (3) A statement of qualification or a statement of foreign qualification pursuant to the "Uniform Partnership Act (1996)," P.L.2000, c.161 (C.42:1A-1 et al.);
- (4) A certificate of limited partnership or a certificate of authority pursuant to the "Uniform Limited Partnership Law (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);
- (5) A certificate of formation or certified registration pursuant to the "New Jersey Limited Liability Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.); and
- (6) Any license, certificate, permit or registration pursuant to R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.); section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

"State wage, benefit and tax laws" means:

- (1) P.L.1965, c.173 (C.34:11-4.1 et seq.);
- (2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.);
- (3) The "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.);
- (4) The workers' compensation law, R.S.34:15-1 et seq.;
- (5) The "unemployment compensation law," R.S.43:21-1 et seq.;
- (6) The "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);
- (7) P.L.2008, c.17 (C.43:21-39.1 et al.);
- (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; and
- (9) P.L.2018, c.10 (C.34:11D-1 et seq.).

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

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

2. a. (1) If the commissioner determines that an employer has violated any State wage, benefit and tax law, including but not limited to a violation of R.S.34:15-79, or failed to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or violated any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner shall, as an alternative to, or in addition to, any other actions taken in the enforcement of those laws, notify the employer of the determination and have an audit of the employer and any successor firm of the employer conducted not more than 12 months after the determination.

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

b. If, in an audit conducted pursuant to subsection a. of this section, the commissioner determines that the employer or any successor firm to the employer has continued in its failure to maintain or report records as required by those laws or continued in its failure to pay wages, benefits, taxes or other contributions or assessments as required by those laws, or if the commissioner is notified pursuant to subsection g. of this section of a conviction of the employer and the offense resulting in the conviction occurred subsequent to an audit conducted pursuant to subsection a. of this section, the commissioner:

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

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

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

(c) Any other harm resulting from the violation;

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

(e) The duration of the violation;

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

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

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

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

c. If, in the subsequent audit or inspection conducted pursuant to subsection b. of this section, the commissioner determines that the employer or successor firm has continued in its failure to maintain or report records as required pursuant to State wage, benefit and tax laws, as defined in section 1 of this act, and continued in its failure to pay wages, benefits, taxes or other contributions or assessments as required by those laws, or if the commissioner is notified pursuant to subsection g. of this section of a conviction of the employer for an offense occurring after the audit conducted pursuant to subsection b. of this section, the

commissioner, after affording the employer or successor firm notice and an opportunity for a hearing in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall issue a written determination directing any appropriate agency to permanently revoke any one or more licenses that are held by the employer or any successor firm to the employer and that are necessary to operate the employer or successor firm.

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

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

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

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

h. In the alternative to proceedings under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in accordance with the provisions of subsection b. of this section, and in addition to any other actions taken in the enforcement of the laws violated by any employer, the commissioner shall have the authority, to be exercised in the commissioner's sole discretion, to bring enforcement actions for any violation of any State wage, benefit and tax law, including but not limited to a violation of R.S.34:15-79, or a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), in the Office of Administrative Law or in the Superior Court for the county in which the violation occurred. When the commissioner, including any of the commissioner's authorized representatives in the Office of the Attorney General, brings an action in the Office of Administrative Law or Superior Court which seeks relief on behalf of any individual for any of the above violations, communications between members of the Attorney General's office and that individual shall be privileged as would be a communication between an attorney and a client.

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

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

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

C.34:1A-1.17 Entrance into place of business, employment; stop-work order.

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

b. The commissioner may issue subpoenas for the attendance of witnesses and the production of books and records. Any entity that fails to furnish information required to the commissioner or agent of the commissioner upon request, or who refuses to admit the commissioner or agent to the place of employment of the employer, or who hinders or delays the commissioner or agent in the performance of duties in the enforcement of this section, may be fined not less than \$1,000 and shall be guilty of a disorderly persons offense. Each day of the failure to furnish the records to the commissioner or agent shall constitute a separate offense, and

each day of refusal to admit, of hindering, or of delaying the commissioner or agent shall constitute a separate offense.

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

c. (1) If the commissioner determines, after either an initial determination as a result of an audit of a business or an investigation pursuant to subsection a. of this section, that an employer is in violation of any State wage, benefit and tax law, including but not limited to a violation of R.S.34:15-79, or a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner may issue a stop-work order against the employer requiring cessation of all business operations of the employer at one or more worksites or across all of the employer's worksites and places of business. The stop-work order may be issued only against the employer found to be in violation or non-compliance. The commissioner shall serve a notification of intent to issue a stop-work order on the employer at the place of business or, for a particular employer worksite, at that worksite at least seven days prior to the issuance of a stop-work order. The order shall be effective when served upon the employer at the place of business or, for a particular employer worksite, when served at that worksite. The order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has come into compliance and has paid any penalty deemed to be satisfactory to the commissioner, or after the commissioner determines, in a hearing held pursuant to paragraph (2) of this subsection, that the employer did not commit the act on which the order was based. The stop-work order shall be effective against any successor entity engaged in the same or equivalent trade or activity that has one or more of the same principals or officers as the corporation, partnership, limited liability company, or sole proprietorship against which the stop-work order was issued. The commissioner may assess a civil penalty of \$5,000 per day against an employer for each day that it conducts business operations that are in violation of the stop-work order. A request for hearing shall not automatically stay the effect of the order.

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

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

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

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

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

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

d. For purposes of this section:

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

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

"Employ" means to suffer or permit to work.

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

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

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

C.34:20-7.1 Determination of compliance; subpoena; stop-work order.

2. a. The Commissioner of Labor and Workforce Development and any agent of the commissioner, upon receipt of a complaint or through a routine investigation for a violation of any State wage, benefit and tax law, as defined in section 1 of P.L.2009, c.194 (C.34:1A-1.11), including but not limited to a violation of R.S.34:15-79, or a failure to meet obligations as provided in R.S.43:21-7 and R.S.43:21-14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), is authorized to enter, during usual business hours, the place of business or employment of any employer of the individual to determine compliance with the wage and hour laws, R.S.34:15-79, R.S.43:21-7, or R.S.43:21-14, and for that purpose may examine payroll and other records

and interview employees, call hearings, administer oaths, take testimony under oath and take interrogatories and oral depositions.

b. The commissioner may issue subpoenas for the attendance of witnesses and the production of books and records. Any entity that fails to furnish information required by the commissioner or agent of the commissioner upon request, or who refuses to admit the commissioner or agent to the place of employment of the employer, or who hinders or delays the commissioner or agent in the performance of duties in the enforcement of this section, may be fined not less than \$1,000 and shall be guilty of a disorderly persons offense. Each day of the failure to furnish the time and wage records to the commissioner or agent shall constitute a separate offense, and each day of refusal to admit, of hindering, or of delaying the commissioner or agent shall constitute a separate offense.

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

c. (1) If the commissioner determines, after either an initial determination as a result of an audit of a business or an investigation pursuant to subsection a. of this section, that an employer is in violation of any State wage, benefit and tax law, as defined in section 1 of P.L.2009, c.194 (C.34:1A-1.11), including but not limited to a violation of R.S.34:15-79, or has failed to meet obligations as provided in R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner may issue a stop-work order against the employer requiring cessation of all business operations of the employer at one or more worksites or across all of the employer's worksites and places of business. The stop-work order may be issued only against the employer found to be in violation or non-compliance. If a stop-work order has been issued against a subcontractor pursuant to this subsection, the general contractor shall retain the right to terminate the subcontractor from the project. The order shall be effective when served upon the employer at the place of business or, for a particular employer worksite, when served at that worksite. The order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has come into compliance and has paid any penalty deemed to be satisfactory to the commissioner, or after the commissioner determines, in a hearing held pursuant to paragraph (2) of this subsection, that the employer did not commit the act on which the order was based. The stop-work order shall be effective against any successor entity engaged in the same or equivalent trade or activity that has one or more of the same principals or officers as the corporation, partnership, limited liability company, or sole proprietorship against which the stop-work order was issued.

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

Within seven business days of receipt of the notification from the contractor, the director shall hold a hearing to allow the contractor to contest the issuance of a stop-work order. The director shall permit the contractor to present evidence at the hearing. If the director fails to

hold a hearing within seven business days of receipt of the notification from the contractor, an administrative law judge shall have the authority to release the stop-work order.

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

If the contractor disagrees with the written decision, the contractor may appeal the decision to the commissioner, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

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

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

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

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

C.34:11-56.35 Penalties, stop-work orders.

11. (a) Any employer who willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or fails to timely respond to or furnish records required by a subpoena issued by the commissioner, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in any day of which a worker is paid less than the rate applicable to him under this act and each worker so paid, shall constitute a separate offense. In addition to the foregoing fines, and in addition to or as an alternative to any criminal proceedings, if an employer fails to comply with any lawfully issued subpoena, or on the

refusal of any witness to testify to any matter regarding which the witness may be lawfully interrogated, the commissioner may apply to the Superior Court to compel obedience by proceedings for contempt, in the same manner as in failure to comply with the requirements of a subpoena issued from the court or a refusal to testify in the court.

(b) As an alternative to or in addition to any other sanctions provided by law for violations of any provision of P.L.1963, c.150 (C.34:11-56.25 et seq.), when the Commissioner of Labor and Workforce Development finds that an employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$2,500 for a first violation and up to a maximum of \$5,000 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor and Workforce Development provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

(c) When the Commissioner of Labor and Workforce Development finds that the employer has violated provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may refer the matter to the Attorney General or his designee for investigation and prosecution. Nothing in this subsection shall be deemed to limit the authority of the Attorney General to investigate and prosecute violations of the New Jersey Code of Criminal Justice, nor to limit the commissioner's ability to refer any matter for criminal investigation or prosecution.

(d) If the commissioner makes an initial determination that an employer has violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) by paying wages at rates less than the rates applicable under that act, whether or not the commissioner refers the matter to the Attorney General or other appropriate prosecutorial authority for investigation or prosecution pursuant to subsection (c) of this section, the commissioner may immediately issue a stop-work order to cease all business operations at one or more worksites or across all of the employer's worksites and places of business. The stop-work order may be issued only against the employer found to be in violation or non-compliance. If a stop-work order has been issued against a subcontractor pursuant to this subsection, the general contractor shall retain the right to terminate the subcontractor from the project. The stop-work order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has agreed to pay wages at the required rate and has paid any wages due and any penalty deemed satisfactory to the commissioner. Once the stop-work

order is issued, any employee affected by a stop-work order issued pursuant to this section shall be entitled to pay from the employer for the first ten days of work lost because of the stop-work order. Upon request of any employee not paid wages, the commissioner can take assignment of the claim and bring any legal action necessary to collect all that is due. As a condition for release from a stop-work order, the commissioner may require the employer to file with the department periodic reports for a probationary period that shall not exceed two years that demonstrate the employer's continued compliance with the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). The commissioner may assess a civil penalty of \$5,000 per day against an employer for each day that it conducts business operations that are in violation of the stop-work order. That penalty shall be collected by the commissioner in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

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

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

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

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

(2) issue a stop-work order against the violators requiring the cessation of all business operations at one or more worksites or across all of the employer's worksites and places of business. The stop-work order shall be effective when served upon the violator or at a place of business or employment by posting a copy of the stop-work order in a conspicuous location at the place of business or employment. The stop-work order shall remain in effect until the commissioner issues an order releasing the stop-work order upon a finding that the violation has been corrected. As a condition of release of a stop-work order under this section, the commissioner may require the employer against whom the stop-work order had been issued to file with the department periodic reports for a probationary period of two years. The commissioner may assess a civil penalty of \$5,000 per day against an employer for each day that it conducts business operations that are in violation of the stop-work order. That penalty shall be collected by the commissioner in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

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

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

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

(1) perform similar work within the same geographical area;

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

7. This act shall take effect immediately.

Approved July 8, 2021.