

New Jersey Makes Sweeping Changes to Independent Contractor Laws

Labor & Employment Law Alert

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New Jersey Governor Phil Murphy last week signed into law several bills aimed at combating the misclassification of workers as independent contractors rather than as employees. The new enactments expand the authority of the New Jersey Department of Labor and Workforce Development (DOL), create new requirements for businesses, and broaden penalties for worker misclassification. We outline the newly enacted laws, most of which took effect immediately on January 20, and recommend review of your practices in these areas.

Stop-Work Orders

One law empowers the DOL to issue stop-work orders against employers found to have violated state wage, benefit, and tax laws. The stop-work order remains in effect until the DOL determines that the employer has complied with the law and paid any assessed penalty or, after a hearing, found that the employer did not commit the violation in dispute.

Employers can appeal but only within 72 hours of receiving the stop-work order. The DOL must hold a hearing within seven business days of receiving the appeal notice, and then issue within five business days a written decision concerning upholding or reversing the stop-work order. An employer may appeal this decision through the Administrative Procedures Act. An employer can also seek injunctive relief from a court to end the stop-work order.

Additional Penalties for Misclassification of Employees

Another law permits the DOL to impose additional penalties for independent contractor misclassification violations. These new penalties include (1) an administrative “misclassification penalty” assessed at \$250 per misclassified employee for a first violation, up to a maximum of \$1,000 per employee for further violations, and (2) a percentage of gross wages penalty assessed at up to 5% of the worker’s gross earnings over the past 12 months and paid to the worker directly or in trust for the worker.

Joint and Several Liability for Payment of Employer Tax Laws

A new law imposes joint and several liability for “client employers” and “labor contractors” who violate New Jersey’s employer tax laws—i.e., the workers’ compensation law, unemployment and temporary disability benefits laws, and state gross income tax act—and wage and hour laws, including provisions pertaining to anti-retaliation and misclassification of workers.

The law imposes individual liability on anyone “acting on behalf of an employer”—including a client employer or labor contractor—who violates any state wage and hour laws or employer tax laws. A person “acting on behalf of an employer” includes an owner, director, officer, or manager of the employer.

Retaliation and Posting Requirements

Another part of the legislative package, which takes effect April 1, 2020, will create a private cause of action for employees who are discharged or discriminated against for (1) inquiring or complaining about misclassification to their employer, their authorized representative, or the DOL; (2) instituting any proceeding regarding worker misclassification under the state’s wage, benefit, and tax laws; or (3) testifying in such a proceeding.

An employer who violates this law will be found guilty of a disorderly persons offense and will, on conviction, be fined not less than \$100 but no more than \$1,000. Where discharge or other discriminatory action occurs, the employer will be required to offer the employee reinstatement, correct any discriminatory action, and pay the employee all reasonable legal costs of the action, all lost wages and benefits, and punitive damages equal to two times the lost wages and benefits, under penalty of contempt proceedings for failure to comply with this requirement.

In late May of 2020, the DOL released a detailed form of [notice poster](#) about worker misclassification that employers are required to post in places accessible to all employees in each of the employer’s workplaces.

Public Posting of Violators and Contracting Prohibition

Another law permits the DOL to post to its website the name of any person who violates the state wage, benefit, and tax laws and against whom a final order has been issued for any violation of these laws. Notably, any person whose name is posted shall be prohibited from entering into contracts with a public body until liability for the violation has been resolved. After posting, a person’s name may be removed from the website within 15 days after the DOL determines that the person has fully satisfied any outstanding liability.

Sharing of Confidential Tax Information

Finally, the new legislation expressly carves out an exception regarding the general prohibition against the disclosure of confidential tax and related documents and allows the Department of Treasury to provide the Commissioner of the DOL with any information—including, but not limited to, tax information statements, reports, audit files, returns, or reports of any investigation—for the purpose of labor market research, or any other information that would assist in investigating wage, benefit, or tax law violations.

Summary

These sweeping changes illustrate New Jersey’s push to challenge independent contractor classifications that are at the core of the “gig economy.” However, the increased tools available to the DOL and the enhanced penalties for misclassification of workers will affect far more than gig workers. Given the fact-sensitive nature of contractor/employee classifications and the added powers granted to the DOL to combat misclassification of workers, any New Jersey business that regularly engages workers as contractors would be wise to consult with counsel regarding its practices concerning the classification of employees and contractors and the potential for reclassifying worker relationships that fall into the gray areas of the law.