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General Misclassification Laws

This statute and rule reprint is for ready reference only. For official text consult the New Jersey Statutes Annotated and the New Jersey Administrative Code.

N.J.S.A. 34:1A-1.18 et seq.

34:1A-1.18	Violations concerning misclassification of employees; penalties
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34:1A-1.18 Violations concerning misclassification of employees; penalties.

1. a. If the Commissioner of Labor and Workforce Development finds that a violation of a State wage, benefit and tax law has occurred and that the violation was in connection with failing to properly classify employees, the commissioner is, in addition to imposing any other remedies or penalties authorized by law, authorized to assess and collect:

(1) an administrative "misclassification penalty" up to a maximum of \$250 per misclassified employee for a first violation and up to a maximum of \$1,000 per misclassified employee for each subsequent violation; and

(2) a penalty to be provided for the misclassified worker of not more than 5 percent of the worker's gross earnings over the past twelve months from the employer who failed to properly classify them. The employer may be required to make these penalty payments to the commissioner to be held in a special account in trust for the worker or workers, or paid on order of the commissioner directly to the workers or workers affected.

When determining the amount of the administrative "misclassification penalty" imposed pursuant to paragraph (1) of this subsection, 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 "misclassification penalty" shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of penalty, and provides the alleged violator an opportunity to request a hearing before the commissioner or his or her designee.

b. For violations of any State wage, benefit or tax law, other than the State unemployment and disability benefits laws, which occur in connection with the misclassification of one or more employees, the alleged violator may request a hearing within 15 days following receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that the violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. For violations subject to this subsection b., payment of the administrative "misclassification penalty" shall be due when the final order is issued or when the notice becomes the final order.

c. For violations of the State unemployment and disability benefits laws in connection with the misclassification of one or more employees, the alleged violator may request a hearing in the manner and within the time prescribed by those laws, and payment of the administrative "misclassification penalty" shall be due when assessment for contributions, penalties and interest are due pursuant to subsection (d) of R.S.43:21-14 or section 31 of P.L.1948, c.110 (C.43:21-55).

d. 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.).

e. Any sum collected as an administrative "misclassification penalty" pursuant to paragraph (1) of subsection a. shall be applied toward enforcement and administration costs of the division within the Department of Labor and Workforce Development responsible for enforcement of the law violated by the employer. Nothing in this section shall prevent the commissioner from assessing interest, penalties, or other fees allowable by law.

f. For purposes of this section, "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), and "State unemployment and disability benefits laws" mean the "unemployment compensation law," R.S.43:21-1 et seq., and the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.).

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34:1A-1.19 Post notices about misclassification.

1. Post notices about misclassification. a. Each employer required to maintain and report records regarding wages, benefits, taxes and other contributions and assessments pursuant to State wage, benefit and tax laws, as defined in section 1 of P.L.2009, c.194 (C.34:1A-1.11), shall conspicuously post notification, in a place or places accessible to all employees in each of the employer's workplaces, in a form issued by the commissioner, explaining:

(1) The prohibition against employers misclassifying employees;

(2) The standard delineated in paragraph (6) of subsection (i) of R.S.43:21-19 that is applied by the department to determine whether an individual is an employee or an independent contractor;

(3) The benefits and protections to which an employee is entitled under State wage, benefit and tax laws;

(4) The remedies under New Jersey law to which workers affected by misclassification may be entitled; and

(5) Information on how a worker or a worker's authorized representative may contact, by telephone, mail and e-mail, a representative of the commissioner to provide information to, or file a complaint with, the representative regarding possible worker misclassification.

b. No employer shall discharge or in any other manner discriminate against an employee because the employee has made an inquiry or complaint to his employer, to the commissioner or to his authorized representative regarding possible worker misclassification, or because the employee has caused to be instituted or is about to cause to be instituted any proceeding regarding worker misclassification under State wage, benefit and tax laws, or because the employee has testified in the proceeding.

c. An employer who violates any provision of this section shall be guilty of a disorderly persons offense and shall, upon conviction, be fined not less than \$100 nor more than \$1,000. In the case of a discharge or other discriminatory action in violation of this section, the employer shall also be required to offer reinstatement in employment to the discharged employee and to correct any discriminatory action, and to pay the employee all reasonable legal costs of the action, all wages and benefits lost as a result of the discharge or discriminatory action, plus punitive damages equal to two times the lost wages and benefits, under penalty of contempt proceedings for failure to comply with the requirement.

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34:1A-1.20 Information regarding worker misclassification.

2. Information regarding worker misclassification. The Department of Labor and Workforce Development shall maintain a webpage that contains information regarding:

(a) The prohibition against employers misclassifying employees;

(b) The standard delineated in paragraph (6) of subsection (i) of R.S.43:21-19 that is applied by the department to determine whether an individual is an employee or an independent contractor;

(c) The benefits and legal protections to which an employee is entitled under State wage, benefit and tax laws;

(d) The remedies under New Jersey law to which workers affected by misclassification may be entitled; and

(e) Information on how a worker or a worker's authorized representative may contact, by telephone, mail and e-mail, a representative of the commissioner to provide information to, or file a complaint with, the representative regarding possible worker misclassification.

3. This act shall take effect on the first day of the third month next following enactment, except that the Commissioner of Labor and Workforce Development may take any anticipatory action in advance as shall be necessary for the implementation of this act.

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