NJ Passes Significant Employment Laws Aimed At Providing Additional Protections For Employees

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Porzio Client Alert

What Employers Need To Know

This past week, Governor Murphy signed into law six employee-friendly bills. Five of the six bills focus on penalizing employers who misclassify employees as independent contractors, while the sixth provides employees with greater protections during "mass" layoffs. The key takeaways from these bills are: (1) the Commissioner of Labor has the authority to issue a stop work order against any employer who violates New Jersey's wage and hour laws (i.e. require the employer to stop all business operations at that location) and impose monetary penalties against employers for misclassifying workers: (2) employees may sue their employers for retaliating against them for inquiring or complaining about being misclassified; (3) businesses using other companies to provide workers to perform labor or services for their business will be jointly liable for violations of New Jersey's wage and hour law and employer tax law; and (4) employers who terminate 50 or more employees must provide 90-days' notice and pay one week of severance pay for every year the employee has been with the company.

What's New

Specifically, the requirements of these six bills are as follows:

1. Stop Work Orders (A5838)

The Commissioner of Labor now has the authority to issue a stop work order against an employer upon determining the employer is not in compliance with New Jersey's wage, benefit, or tax laws. A stop-work order issued under this law requires an employer stop all business operations at every location where the Commissioner finds a violation occurred. It remains in effect until the Commissioner issues an order releasing the stop work order upon a finding that the employer has agreed to pay the required wages and has paid any wages or penalty owed. Employers that refuse to comply with the stop work order can face fines of up to $5,000 per day.

Employers have only 72 hours to appeal and contest the stop work order before the Commissioner. After that time, employers will have to file an emergent action seeking injunctive relief in the New Jersey Superior Court and demonstrate that the stop work order was issued in error. The law takes effect immediately.

2. Financial Penalties (A5839)

The Commissioner of Labor also has the ability to fine employers for violations of New Jersey's wage, benefit, or tax laws in connection with failing to classify employees properly. Of particular importance, the Commissioner may issue an administrative "misclassification penalty" up to $250 per misclassified employee for the first offense and up to $1,000 per misclassified employee for every subsequent violation. The employer also may be required to pay up to 5% of the misclassified employee's gross earnings as an additional penalty that will be paid to each misclassified employee (creating an incentive for these individuals to report potential violations). The law takes effect immediately.

3. Private Cause of Action for Retaliation & Posting Requirement (A5843)

Employers are prohibited from retaliating against employees who either inquire or complain about being misclassified or institute a proceeding regarding their misclassification. Of critical importance, employees may file a retaliation lawsuit against their employer for being discharged or otherwise discriminated against for complaining or inquiring about their misclassification. Penalties for employers that violate this law can be significant. An employer who violates this provision can be found guilty of a disorderly person offense (i.e., a criminal conviction) and subject to a fine up to $1,000. The employer also will be required to offer reinstatement to discharged employees, pay the employee all reasonable legal costs, pay the employee all wages and benefits lost as a result of the discharge or discrimination, and pay punitive damages equal to two times the lost wages and benefits.

Employers also are required to post notices at their places of employment related to misclassification. The notice must explain: (1) the prohibition against employers misclassifying employees; (2) the standard applied by the Department to determine whether one 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.

This law takes effect April 1, 2020.

4. Joint Liability for Employers Using Staffing Agencies (A5840)

Businesses using other companies to provide workers to perform labor or services for the business will be liable (along with the employing company) for any violations of New Jersey's employer tax law. This expands a recent change to the law which only required joint and several liability for violations of the wage and hour law. The law also expands liability to any person acting on behalf of the employer. This includes owners, directors, officers, or managers. The law takes effect immediately.

5. Sharing of Information by the Department of Treasury to Department of Labor (S4228)

The Division of Taxation is permitted to provide information (such as tax information statements, reports, audit files, returns, and investigation reports) to the Department of Labor & Workforce Development. This transfer of information likely will assist the Department in investigating any wage and hour violations, thereby increasing the number of claims brought against employers. The law takes effect immediately.

6. Mass Layoffs (S3170)

The new law amends New Jersey's mass layoff law. Under the law, an employer with 100 or more employees must provide 90-days' notice any time it undergoes a layoff of 50 or more full or part-time employees in any 30-day period. Employers that provide employees with less than the 90-days' notice must provide the employees with an additional four weeks of pay. Most significant, however, is the requirement that these employees are entitled to a mandatory severance payment. Each employee must receive one week of severance pay for every year of service with the employer. For example, every

employee who has been with an employer for 12 years, would be entitled to about three months of severance pay (i.e., 12 weeks of pay). This law takes effect on July 19, 2020.

Recommended Actions For Employers

Based on these laws, employers must be cautious in utilizing independent contractors. The Governor's office and the Department of Labor & Workforce have made it clear that they will be examining closely employment classifications to ensure employees are properly categorized. Those employers that are inappropriately classifying employees as independent contractors will face harsh penalties. The Legislature has been working on various iterations of a legislation that would further restrict the use of independent contractors, by revising the test to determine an employee vs an independent contractor. Porzio is keeping a close eye on pending legislation in this area.

For the time being, employers and HR professionals immediately should review the classifications of all independent contractors, analyze these employees under the appropriate legal standard, and ensure they have supporting documentation for their classification. Employers who use staffing agencies also should review those contracts to ensure they are comfortable with the level of protection and liability they will assume in the event of a wage and hour or other employment-related violation.