

P.L. 2019, CHAPTER 375, *approved January 20, 2020*
Assembly, No. 5843

1 **AN ACT** concerning employee misclassification and supplementing
2 Title 34 of the Revised Statutes.

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

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

15 (1) The prohibition against employers misclassifying
16 employees;

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

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

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

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

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

37 c. An employer who violates any provision of this section shall
38 be guilty of a disorderly persons offense and shall, upon conviction,
39 be fined not less than \$100 nor more than \$1,000. In the case of a
40 discharge or other discriminatory action in violation of this section,
41 the employer shall also be required to offer reinstatement in

1 employment to the discharged employee and to correct any
2 discriminatory action, and to pay the employee all reasonable legal
3 costs of the action, all wages and benefits lost as a result of the
4 discharge or discriminatory action, plus punitive damages equal to
5 two times the lost wages and benefits, under penalty of contempt
6 proceedings for failure to comply with the requirement.

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

11 (a) The prohibition against employers misclassifying
12 employees;

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

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

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

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

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

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32 **STATEMENT**

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34 This bill requires employers to post a notice for their employees
35 regarding employee misclassification. Specifically, under the bill,
36 an employer is required to conspicuously post notification, in a
37 place or places accessible to all employees in each of the
38 employer's workplaces, in a form issued by the commissioner,
39 explaining:

40 1. The prohibition against employers misclassifying
41 employees;

42 2. The standard that is applied by the department to determine
43 whether one is an employee or an independent contractor;

44 3. The benefits and protections to which an employee is
45 entitled under State wage, benefit and tax laws;

46 4. The remedies under New Jersey law to which workers
47 affected by misclassification may be entitled; and

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

6 The bill prohibits an employer from discharging or in any other
7 manner discriminating against an employee because the employee
8 has made an inquiry or complaint to his employer, to the
9 commissioner or to his authorized representative regarding possible
10 worker misclassification, or because the employee has caused to be
11 instituted or is about to cause to be instituted any proceeding
12 regarding worker misclassification under State wage, benefit and
13 tax laws, or because the employee has testified in the proceeding.

14 Under the bill, an employer who violates any of those provisions
15 will be guilty of a disorderly persons offense and will, upon
16 conviction, be subject to a fine. An employer will also be required
17 to offer reinstatement in employment to a discharged employee and
18 to correct any discriminatory action, and to pay the employee all
19 reasonable legal costs of the action, all wages and benefits lost as a
20 result of the discharge or discriminatory action, plus punitive
21 damages equal to two times the lost wages and benefits, under
22 penalty of contempt proceedings for failure to comply with the
23 requirement.

24 Finally, the bill requires the Department of Labor and Workforce
25 Development to maintain a webpage that contains information
26 regarding employee misclassification.

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32 Requires employers to post notice for employees on employee
misclassification.