SENATE, No. 1790

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 5, 2018

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)
Assemblywoman ANNETTE QUIJANO
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District 6 (Burlington and Camden)
Assemblyman WAYNE P. DEANGELO
District 14 (Mercer and Middlesex)

Co-Sponsored by:
Assemblymen Benson, Egan, Assemblywoman Timberlake, Assemblyman Verrelli, Assemblywoman Tucker, Assemblyman Danielsen, Assemblywomen Murphy, Downey, Reynolds-Jackson and McKnight

SYNOPSIS
Concerns law regarding failure to pay wages.

CURRENT VERSION OF TEXT
As amended by the General Assembly on June 10, 2019.

(Sponsorship Updated As Of: 6/28/2019)
AN ACT concerning enforcement, penalties, and procedures for law
regarding failure to pay wages, revising various parts of the
statutory law, and supplementing 2[article] articles 1 and 3 of
chapter 11 of Title 34 of the Revised Statutes.

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

1[1]. Section 10 of P.L.1999, c.90 (C.2C:40A-2) is amended to
read as follows:

10. Violation of contract to pay employees.

a. An employer who has agreed with an employee or with a
bargaining agent for employees to pay wages, compensation or
benefits to or for the benefit of employees commits a disorderly
persons offense if the employer:

(1) fails to pay wages when due and as required by law; or

(2) fails to pay compensation or benefits as agreed and as
required by law, including all State wage, benefit and tax laws
within 30 days after due.

b. If a corporate employer violates subsection a., any officer or
employee of the corporation who is responsible for the violation
commits a disorderly persons offense.

c. Upon the presentation of sufficient evidence of a violation of
this section, the fact finder may infer that an employer who fails to
present employee records, as required pursuant to State wage,
benefit and tax laws, employed the complainant for the period of
time, and owes the amount of wages, as alleged in the complaint,
unless the employer demonstrates good cause for the failure to
present employee records.

d. A complaint alleging a violation of this section shall be filed
where the offense occurred, which for purposes of this section may
be the place where the employee was hired or the place where the
relevant work was performed by the employee.

e. Jurisdiction for prosecution under this section shall be the
place where the offense occurred, which for purposes of this section
may be the place where the employee was hired or the place where
the relevant work was performed by the employee.

f. An employer found to owe wages to an employee because
the employer committed a violation of this section shall pay the
employee the wages owed plus liquidated damages equal to 200
percent of the wages owed, and reasonable costs of the action to the
employee.

g. In addition to damages provided in this or any other law, an
employer found guilty of violating the provisions of this section

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
2Senate SBA committee amendments adopted January 28, 2019.
3Senate floor amendments adopted March 14, 2019.
4Assembly floor amendments adopted June 10, 2019.
shall be fined $500 plus a penalty equal to 20 percent of any wages owed for a first offense, and $1,000 plus a penalty equal to 20 percent of any wages owed for subsequent offenses. Any sum collected as a fine or penalty pursuant to this subsection shall be applied toward enforcement and administration costs of the Division of Wage and Hour Compliance in the Department of Labor and Workforce Development.

h. An employer who is found to have retaliated against an employee for filing a complaint under this section commits a disorderly persons offense and shall, upon conviction for the violation, be fined not less than $100 nor more than $1,000, and shall be liable to the employee for all wages lost as a result of the retaliation plus damages equal to 200 percent of the wages lost as a result of the retaliation, and reasonable costs of the action to the employee and, if the employee was discharged, be required to offer reinstatement, unless the reinstatement is prohibited by law.

i. No payment of an amount of wages owed or related damages, including wages or damages related to retaliation, shall be required under this section in addition to any amount of wages and damages paid for the same violation pursuant to any action taken under State wage and hour laws.

j. For purposes of this section:

“Compensation or benefits” is remuneration received in return for services rendered and includes, but is not limited to, health benefits, pensions, medical treatment, disability compensation and workers’ compensation, including death benefits to dependents of workers who have died as a result of their employment.

“Employee” means any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees, except that, for the purposes of subsections c. through i. of this section, “employee” shall not include any employee working in the construction industry under the provisions of a collective bargaining agreement.

“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, except that, for the purposes of subsections c. through i. of this section, “employer” shall not include any employer in the construction industry with respect to employees of that employer working under the provisions of a collective bargaining agreement with the employer. For the purposes of this section the officers of a corporation and any agents having the management of that corporation shall be deemed to be the employers of the employees of the corporation.

“State wage and hour laws” means article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),
and article 3 of chapter 11 of Title 34 of the Revised Statutes
(R.S.34:11-57 et seq.), but “State wage and hour laws” do not
include the “New Jersey Prevailing Wage Act,” P.L.1963, c.150
(C.34:11-56.25 et seq.), 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 State wage and hour
laws and all of the following:
(1) The workers’ compensation law, R.S.34:15-1 et seq.;
(2) The “unemployment compensation law,” R.S.43:21-1 et
seq.;
(3) The “Temporary Disability Benefits Law,” P.L.1948, c.110
(C.43:21-25 et al.);
(4) P.L.2008, c.17 (C.43:21-39.1 et al.); and
seq.
“When due” is the time agreed upon by the employer and
employee but in any case not greater than 16 days of completion of
the work as provided for under section 2 of P.L.1965, c.173
(C.34:11-4.2) and in accordance with a bi-monthly payment
schedule.
(cf: P.L.1999, c.90, s.10)1

1 Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is
amended to read as follows:
2. a. If the commissioner is notified pursuant to
subsection g. of this section by the Attorney General, the Attorney
General’s designee, or a court, of a conviction of an employer under
subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2), or if the commissioner determines that an employer has failed, for one or
more of its employees, to maintain and report every record
regarding wages, benefits and taxes which the employer is required
to maintain and report pursuant to State wage, benefit and tax laws,
as defined in section 1 of this act, and has, in connection with that
failure to maintain or report the records, failed to pay wages,
benefits, taxes or other contributions or assessments as required by
those laws, 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 subsequent conviction of the employer under subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2) 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 subsequent conviction of the employer under subsection a, of section 10 of P.L.1999, c.90 (C.2C:40A-2) 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 section 10 of P.L.1999, c.90 (C.2C:40A-2) 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) the Attorney General, the Attorney General’s designee, section 13 of P.L. , c. . (C. ) (pending before the Legislature as this bill), 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.
(cf: P.L.2009, c.194, s.2)

Section 10 of P.L.1965, c.173 (C.34:11-4.10) is
amended to read as follows:

10. a. Any employer who knowingly fails to
pay the full amount of wages to an employee agreed to or required
by, or in the manner required by, the provisions of article 1 of
chapter 11 of Title 34 of the Revised Statutes and all acts
supplementing that article (R.S.34:11-2 et al.), or who knowingly violates any other provision of P.L.1965, c.173 (34:11-4.1 et seq.), or who discharges, or in any other manner discriminates, takes a retaliatory action against an employee by discharging or in any other manner discriminating against the employee because the employee has made a complaint to that employee’s employer, to the commissioner, or to that employee’s authorized representative, that the employer has not paid the employee the full amount of wages agreed upon or required by, and in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to that article or those acts, or because that employee has testified or is about to testify in any proceeding under or relating to that article or those acts, or because the employee has informed any person employee of the employer about rights under State laws regarding wages and hours worked, shall be guilty of a disorderly persons offense and, upon conviction for a first violation, shall be punished by a fine of not less than $100 nor more than $1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment and, upon conviction for a second or subsequent violation, be punished by a fine of not less than $1,000 nor more than $2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment. [Upon conviction for a third or subsequent violation, an employer shall be guilty of a crime of the fourth degree and be punished by a fine of not less than $2,000 nor more than $10,000 or by imprisonment for up to 18 months or by both the fine and imprisonment.]

1. Each week, in any day of which any violation of this act article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.) continues shall constitute a separate and distinct offense. In the case of a discharge or other discriminatory action against the employee which is in violation of this subsection, the employer shall also be required to offer reinstatement in

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employment to the discharged employee, unless the reinstatement
is prohibited by law, and to correct the discriminatory action, and
also to pay to the employee, in full, all wages lost as a result of that
discharge or discriminatory action, plus any reasonable cost of
the action, and liquidated damages equal to not more than
percent of the wages due, under penalty of contempt proceedings.
Taking an adverse action against an employee within ninety days of
the employee filing a complaint with the commissioner, or a claim
or action being brought by or on behalf of the employee in a court
of competent jurisdiction for a violation of article 1 of chapter 11
of Title 34 of the Revised Statutes and all acts supplementing that
article (R.S.34:11-2 et al.) shall raise a presumption be
considered presumptive evidence that the employer’s action was
discriminatory action knowingly taken in retaliation, which
may be rebutted only by clear and convincing evidence that the
action was taken for other, permissible, reasons against the
employee. An employee complaint or other communication need
not make explicit reference to any section or provision of any State
law regarding wages and hours worked to trigger the protections of
this section.

b. As an alternative to or in addition to any other sanctions
provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et
seq.), when the Commissioner of Labor and Workforce
Development finds that an employer has violated that act, or taken
any action against the employee in violation of subsection a. of this section, the commissioner is
authorized to assess and collect administrative penalties, up to a
maximum of $250 for a first violation and up to a maximum of
$500 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" (N.J.S.2A:58-1 et seq.)] 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. If any employer fails to pay the full amount of wages to an employee agreed to or required by, or in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), the employee may recover in a civil action the full amount of any wages due, or any wages due lost because of any discriminatory retaliatory action taken in violation of subsection a. of this section, plus an amount of liquidated damages equal to not more than 200 percent of the wages lost or of the wages due, together with costs and reasonable attorney's fees as are allowed by the court, except that if there is an agreement of the employee to accept payment of the unpaid wages supervised by the commissioner pursuant to section 9 of P.L.1965, c.173 (C.34:11-4.9) or R.S.34:11-58, the liquidated damages shall be equal to not more than 200 percent of wages that were due prior to the supervised payment. The payment of liquidated damages shall not be required for a first violation by an employer if the employer shows to the satisfaction of the court that the act or omission constituting the violation was an inadvertent error made in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation, and the employer acknowledges that the employer violated the law and pays the amount owed within 30 days of notice of the violation.

In a case of retaliation against an employee in violation of the provisions of subsection a. of this section, the employer shall also be required to offer reinstatement in employment to the discharged employee and take other actions as needed to correct the retaliatory action. For purposes of this subsection, an employer taking an adverse action against an employee within ninety days of the employee filing a complaint with the commissioner, or a claim or action being brought by or on behalf of the employee in a court of competent jurisdiction, for a violation of provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.) shall raise a presumption that the employer’s action was taken in retaliation against the employee, which presumption may be rebutted only by clear and convincing evidence that the action was taken for other, permissible reasons.

Any agreement by the employee to work for, or accept, wages paid which are less than the amount agreed to or required by law, or paid in a manner other than that required by article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that...
article (R.S.34:11-2 et al.), shall be no defense to the action. The employee shall be entitled to maintain the action for and on behalf of other similarly situated employees, or designate an agent or representative to maintain the action for and on behalf of all similarly situated employees. The employee may bring the action to recover for all appropriate relief, including reinstatement, the payment of damages and the recovery of lost wages or unpaid wages pursuant to this section in the Superior Court, and may bring the action in the Division of Small Claims of the Superior Court, Law Division, Special Civil Part if the sum of the unpaid wages and the liquidated damages does not exceed the jurisdictional limits of the Division of Small Claims. Upon the request of any employee not paid the full wages agreed upon or required by law and in the manner required by the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), the commissioner may take an assignment of the wage claim in trust for the assigning employee and may bring any legal action necessary to collect the claim, and the employer shall be required to pay to the employee the unpaid wages and liquidated damages equal to not more than 200 percent of the amount of the unpaid wages and pay to the commissioner the costs and reasonable attorney's fees as determined by the court. The payment of liquidated damages shall not be required for a first violation by an employer if the employer shows to the satisfaction of the court that the act or omission constituting the violation was an inadvertent error made in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation, and the employer acknowledges that the employer violated the law and pays the amount owed within 30 days of notice of the violation.

Section 25 of P.L.1966, c.113 (C.34:11-56a24) is amended to read as follows:

25. a. Any employer who discharges or in any other manner discriminates takes a retaliatory action against any employee by discharging or in any other manner discriminating against the employee because the employee has made any complaint to his employer, to the commissioner, the director or to their authorized representatives, or to a representative of the employee, that he has not been paid wages in accordance with the provisions of this act, or because such employee has caused to be instituted any proceeding under or related to this act, or because such employee has testifed or is about to testify in any such proceeding, or because such employee has served or is about to serve on a wage board, or because the employee has informed any employee of the employer about rights under State laws regarding wages and hours of work, shall be guilty of a disorderly persons offense and shall, upon conviction therefor...
for a first violation, be fined not less than $100 nor more than $1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment and, upon conviction for a second or subsequent violation, be punished by a fine of not less than $1,000 nor more than $2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment. Upon conviction for a third or subsequent violation, an employer shall be guilty of a crime of the fourth degree and be punished by a fine of not less than $2,000 nor more than $10,000 or by imprisonment for up to 18 months or by both the fine and imprisonment. Such employer shall also be required, as a condition of such judgment of conviction, to offer reinstatement in employment to any such discharged employee, unless the reinstatement is prohibited by law, and to correct any such discriminatory action, and also to pay to any such employee in full, all wages lost as a result of such discharge or discriminatory action and an additional amount of liquidated damages equal to not more than 200 percent of the wages due lost, under penalty of contempt proceedings for failure to comply with such requirement. Taking an adverse action against an employee within ninety days of the employee filing a complaint with the commissioner, or a claim or action being brought by or on behalf of the employee in a court of competent jurisdiction, for a violation of P.L.1966, c.113 (C.34:11-56a et seq.) shall raise a presumption that the employer's action was a discriminatory action knowingly taken in retaliation, which may be rebutted only by clear and convincing evidence that the action was taken for other, permissible, reasons against the employee. An employee complaint or other communication need not make explicit reference to any section or provision of State law regarding wages or hours worked to trigger the protections of this section.

b. As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1966, c.113 (C.34:11-56a et seq.), when the Commissioner of Labor and Workforce Development finds that an employer has violated that act, or taken any retaliatory action against the employee in violation of subsection a. of this section, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of $250 for a first violation and up to a maximum of $500 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” (N.J.S.2A:58-1 et seq.)] 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.

(cf: P.L.1991, c.205, s.22)

Section 26 of P.L.1966, c.113 (C.34:11-56a25) is amended to read as follows:

26. If any employee is paid by an employer less than the minimum fair wage to which [such] the employee is entitled under the provisions of [this act] P.L.1966, c.113 (C.34:11-56a et seq.) or by virtue of a minimum fair wage order [such] or suffers a loss of wages or other damages because of a retaliatory action by the employer in violation of the provisions of section 24 of P.L.1966, c.113 (C.34:11-56a24), the employee may recover in a civil action the full amount of [such] that minimum wage less any amount actually paid to him or her by the employer [together with] or any wages lost due to the retaliatory action, and an additional amount equal to [not more than] 200 percent of the amount of the unpaid minimum wages or wages lost due to retaliatory action as liquidated damages, plus costs and [such] reasonable attorney's fees as [may be allowed] determined by the court, and any except that if there is an agreement of the employee to accept payment of the unpaid wages or compensation supervised by the commissioner pursuant to section 24 of P.L.1966, c.113 (C.34:11-56a23) or R.S.34:11-58, the liquidated damages shall be equal to [not more than] 200 percent of wages that were due prior to the supervised payment. The payment of liquidated damages shall not be required for a first violation by an employer if the employer shows to the satisfaction of the court that the act or omission constituting the violation was an inadvertent error made in good
faith and that the employer had reasonable grounds for believing
that the act or omission was not a violation, and the employer
acknowledges that the employer violated the law and pays the
amount owed within 30 days of notice of the violation.  
In a case
of retaliation against an employee in violation of the provisions of
section 24 of P.L.1966, c.113 (C.34:11-56a24), the employer shall
also be required to offer reinstatement in employment to the
discharged employee, and take other actions as needed to correct
the retaliatory action. For purposes of this section, an employer
taking an adverse action against an employee within 90 days of the
employee filing a complaint with the commissioner or a claim or
action being brought by or on behalf of the employee in a court of
competent jurisdiction for a violation of P.L.1966, c.113 (C.34:11-
56a et seq.) shall raise a presumption that the employer’s action was
taken in retaliation against the employee, which presumption may
be rebutted only by clear and convincing evidence that the action
was taken for other, permissible, reasons. Any agreement between
such the employee and the employer to work for less than such the
minimum fair wage shall be no defense to the action. An employee shall be entitled to maintain such the action for and on behalf of himself or other employees similarly situated, and such the employee and employees may designate an agent or representative to maintain such the action for and on behalf of all employees similarly situated. The employee may bring the action
to recover unpaid minimum wages, or wages lost due to retaliatory
action, or other appropriate relief, including reinstatement and
payment of damages pursuant to this section in the Superior Court, and may bring the action in the Division of Small Claims
of the Superior Court, Law Division, Special Civil Part if the sum
of the amount of unpaid minimum wages or lost wages and the
amount of liquidated damages does not exceed the jurisdictional
limits of the Division of Small Claims.

At the request of any employee paid less than the minimum wage
to which such the employee was entitled under the provisions of
this act P.L.1966, c.113 (C.34:11-56a et seq.) or under an order,
the commissioner may take an assignment of the wage claim in trust
for the assigning employee and may bring any legal action
necessary to collect the claim, and the employer shall be required to
pay to the employee the unpaid wages and liquidated damages equal
to not more than 200 percent the amount of the unpaid wages and
pay to the commissioner the costs and such reasonable attorney's
fees as may be allowed determined by the court. The payment
of liquidated damages shall not be required for a first violation by
an employer if the employer shows to the satisfaction of the court
that the act or omission constituting the violation was an inadvertent
error made in good faith and that the employer had reasonable
grounds for believing that the act or omission was not a violation,
and the employer acknowledges that the employer violated the law
and pays the amount owed within 30 days of notice of the
violation.  
(cf: P.L.1966, c.113, s.26)

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Section 1 of P.L.1967, c.216 (C.34:11-56a25.1) is
amended to read as follows:
1. No claim for unpaid minimum wages, unpaid overtime
compensation, unlawful discharge or other discriminatory acts
taken in retaliation against the employee, or other damages under
this act shall be valid with respect to any such claim which has
arisen more than six years prior to the commencement of an
action for the recovery thereof. In determining when an action is
Commenced, the action shall be considered to be commenced on the
date when a complaint is filed with the Commissioner of the
Department of Labor and Workforce Development or
the Director of the Wage and Hour Compliance, and
notice of such complaint is served upon the employer; or, where an
audit by the Department of Labor and Workforce
Development discloses a probable cause of action for unpaid
minimum wages, unpaid overtime compensation, or other damages,
and notice of such probable cause of action is served upon the
employer by the Director of the Wage and Hour Compliance; or where a cause of action is commenced in a court of
appropriate jurisdiction.
(cf: P.L.1967, c.216, s.1)

R.S.34:11-57 is amended to read as follows:
34:11-57. As used in this article:
"Commissioner" means the Commissioner of Labor and
Workforce Development or any person or persons in the
department designated in writing by him for the purposes of this
article.
"Community-based organization" means a public, or nonprofit
private, organization funded with public or private funds, or both,
that provides services to day laborers, migrant laborers, temporary
laborers, low wage workers, or any other type of employee.
"Department" means the Department of Labor and Workforce
Development.
"Employee" means any natural person who works for another for
hire.
"Employer" means any person, partnership, firm or corporation
employing another for hire.
"Legal services organization" means a public, or nonprofit
private, organization funded with public or private funds, or both,
that provides counseling or advice related to wage protection laws,
preparation of legal documents, or representation of any person
before a court or administrative agency.

“State wage and hour laws” means article 1 of chapter 11 of Title
34 of the Revised Statutes and all acts supplementing that article
(R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),
and article 3 of chapter 11 of Title 34 of the Revised Statutes
(R.S.34:11-57 et seq.), but “State wage and hour laws” do not
include the “New Jersey Prevailing Wage Act,” P.L.1963, c.150
(C.34:11-56.25 et seq.), or “The Public Works Contractor
Registration Act,” P.L.1999, c.238 (C.34:11-56.48 et seq.).

“Wages” means any moneys due an employee from the employer
whether payable by the hour, day, week, semimonthly, monthly or
yearly and shall include commissions, bonus, piecework
compensation and any other benefits arising out of an employment
contract.

(cf: P.L.1964, c.92, s.1)

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1 R.S.34:11-58 is amended to read as follows:

a. An employee may file a claim for wages against
an employer under this section or any of the other State wage and
hours laws for wages owed related to work performed, including
but not limited to wages owed related to unpaid minimum wages,
unpaid overtime compensation, wages lost because of unlawful
discharge or other discriminatory acts taken in retaliation against
the employee, up to six years prior to the date the claim for wages
is filed.

b. An employer found to owe an employee wages shall pay the
employee the wages owed plus liquidated damages equal to not
more than 200% of the wages owed, exclusive of any costs or fees.

c. The commissioner is authorized and empowered to
investigate any claim for wages due an employee and in such
investigation may summon the defendant, subpoena witnesses,
administer oaths, take testimony and shall upon such proceeding
make a decision or award when the sum in controversy, exclusive
of costs, does not exceed $30,000.00. Such decision or award shall be a judgment when a certified
copy thereof is filed with the Superior Court.

Such judgment shall be entered in the same manner and have the
same effect and be subject to the same proceedings as are judgments rendered in suits duly heard and determined by courts of
competent jurisdiction.

d. Upon an investigation of a wage claim initiated pursuant to
this section or any of the other State wage and hours laws, if an
employer fails to provide sufficient employee records, as required
to be kept under any State wage and hour laws, there shall be a
rebuttable presumption that the employee worked for the employer
for the period of time and for the amount of wages as alleged in the
wage claim. The rebuttable presumption shall not apply to an
employer that can demonstrate it does not have sufficient employee
records as a result of record destruction due to a natural disaster.¹

e. The commissioner is authorized to supervise the payment of
amounts, including liquidated damages, due to employees under an
award made pursuant to this section, and the employer may be
required to make these payments to the commissioner to be held in
a special account in trust for the employees, and paid on order of
the commissioner directly to the employee or employees affected.
The employer shall also pay the commissioner an administrative fee
equal to not less than 10% or more than 25% of any payment made
to the commissioner pursuant to this section. The amount of the
administrative fee shall be specified in a schedule of fees to be
promulgated by rule or regulation of the commissioner in
accordance with the "Administrative Procedure Act," P.L.1968,
c.410 (C.52:14B-1 et seq.). The fee shall be applied to enforcement
and administration costs of the Division of Workplace Standards in
the Department of Labor and Workforce Development.
f. Upon issuing a decision, under this section or any of the
other State wage and hours laws, finding wages due to an employee
in an amount equal to or greater than $5,000, the commissioner
shall:
(1) inform the employer that the commissioner’s intention to
commissioner may conduct an audit of the employer
or any successor firm of the employer pursuant to section 2 of
P.L.2009, c.194 (C.34:1A-1.12); and
(2) notify the Division of Taxation in the Department of the
Treasury of the decision and recommend that the division
conduct an audit of the employer to ensure the proper withholding
and payment of payroll and other taxes by the employer.
g. No payment of an amount of wages owed or related
damages, including wages or damages related to retaliation, shall be
required under the provision of this section, or under the provisions
of any of the other State wage and hour laws, which results in a
violator paying wages owed or damages more than one time for the
same violation.
(cf: P.L.2006, c.25, s.1)

¹[9.] 8.¹ (New section) 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 of the violator. The stop work
order may only be issued against the individual or entity found to be
in violation, and only as to the specific place of business or
employment for which the violation exists. 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.

b. Stop work orders and any penalties imposed under a stop
work order against a corporation, partnership, 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 [three] 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. perform work in the same geographical area;
6. employ substantially the same work force, administrative
employees, or both;
7. utilize the same tools and facilities, or
8. employ or engage the services of any person or
persons involved in the direction or control of the other; or
9. list substantially the same work experience.

(10) (New section) a. A client employer and a labor
contractor providing workers to the client employer shall be subject
to joint and several liability and shall share civil legal responsibility
for any violations of the provisions of State wage and hour laws or
violations of the provisions of section 10 of P.L.1999, c.90
(C.2C:40A-2) regarding compliance with State wage and hour laws, including provisions regarding retaliatory actions against employees for exercising their rights under any of those laws, and both may be subject to any remedy provided for violations of those laws. A client employer shall not shift to the labor contractor any legal duties or liabilities under the provisions of the “Worker Health and Safety Act,” P.L.1965, c.154 (C.34:6A-1 et seq.) or “The Worker and Community Right to Know Act,” P.L.1983, c.315 (C.34:5A-1 et seq.) with respect to workers supplied by the labor contractor. A waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

b. This section shall not be interpreted as:

(1) imposing individual liability on a homeowner for labor or services received at the home or the owner of a home-based business for labor or services received at the home; or

(2) restricting or limiting the rights of a client employer to recover from a labor contractor any expense to the client employer, or the rights of a labor contractor to recover from a client employer any expense to the labor contractor, resulting from any violation by the labor contractor or client employer of the provisions of State wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40A-2), or restricting or limiting the provisions in contracts between client employers and labor contractors regarding the recovery of expenses pursuant to this paragraph.

c. As used in this section:

“Client employer” means a business entity, regardless of its form, that obtains or is provided workers, directly from a labor contractor or indirectly from a subcontractor, to perform labor or services within its usual course of business.

“Labor contractor” means any individual or entity that supplies, either with or without a contract, directly or indirectly, a client employer with workers to perform labor or services within the client employer’s usual course of business, except that “labor contractor” does not include a bona fide labor organization or apprenticeship program, or a hiring hall operated pursuant to a collective bargaining agreement.

“Usual course of business” means the regular and customary work of a business, performed within or upon the premises or worksite of the client employer, or any other place of business of the client employer for which services or labor are performed.

11. (New section) Each employer shall provide each current employee and each newly hired employee of the employer, a written copy of the statement produced by the department pursuant to 12 subsection c. of 12 section 12 of P.L. (pending before the Legislature as this bill) of the employee’s rights under the provisions of State wage and hour laws and the provisions
of section 10 of P.L.1999, c.90 (C.2C:40A-2), with an explanation
of how to file a claim or take an action pursuant to those laws.

12. (New section) The department, for the purpose of
supporting the enforcement of the provisions of State wage and
hour laws and the provisions of section 10 of P.L.1999, c.90
(C.2C:40A-2), shall:

a. may contract with community-based organizations and legal
services organizations to disseminate information to day laborers,
migrant laborers, temporary laborers, or any other type of employee
concerning the protections afforded by State wage and hour laws
and section 10 of P.L.1999, c.90 (C.2C:40A-2), and the process by
which an individual may take actions under those laws;

b. contract with community-based organizations and legal
services organizations to investigate, prepare, and if necessary,
represent employees in actions under State wage and hour laws or
section 10 of P.L.1999, c.90 (C.2C:40A-2), including actions under
those laws concerning retaliation against employees; and

c. and shall produce, and make available to the public on the
website of the department, a statement of
employee rights under the provisions of State wage and hour laws
and the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2),
with an explanation of how to file a claim or take an action pursuant
to those laws.

The contracts entered into between the department and
community-based organizations and legal services organizations
pursuant to this section shall require that the organizations make all
services accessible to persons with limited English proficiency
and shall provide that, in any case in which the community-based
or legal services organization assists or represents employees
pursuant to subsection b. of this section, 50 percent of any fees or
penalties collected by the department shall be paid to the
organization for services provided pursuant to contracts entered into
pursuant to this section, and that Any payment made to an
organization under a contract shall be regarded as an enforcement
and administrative cost of the Division of Workplace Standards of
the department.

The department, and any community-based organization or legal
services organization contracting with the department pursuant to
this section, shall provide any individual seeking assistance to file a
complaint or take an action regarding unpaid wages with a
description of all of the applicable remedies available to the
individual under State wage and hour laws and section 10 of
P.L.1999, c.90 (C.2C:40A-2), including the individual’s right to
obtain liquidated damages, and that that right to damages is waived
if the individual agrees to accept payment of the unpaid wages
supervised by the commissioner.
The commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, shall compile and prominently place on a website, maintained by the department and available to the public, an annual report evaluating the effectiveness and efficiency of the enforcement and administration of wage claims and wage collections. The report shall include, but not be limited to:

1. the number of complaints, investigations, prosecutions, dispositions, and business license suspensions and revocations, the number and amount of penalties, the amount of wages recovered, and the number of workers effected;

2. an enumeration and description of all community-based and legal services organizations contracted by the department to support the enforcement; and

3. recommendations for strengthening the implementation and enforcement of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. The commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, shall compile and prominently place on a website, maintained by the department and available to the public, the following information regarding each wage claim in which an employer was found to have been in violation of one or more State wage and hour laws in a final determination by the commissioner or a judgement of a court made during the preceding period of not less than 12 months:

1. the name and address of the employer;

2. the nature of the claim, including whether it is a claim for one or more of the following: unpaid wages; failure to pay the minimum wage; failure to pay required overtime; or retaliation against an employee in connection with State wage and hour laws;

3. the number of affected employees, and the amount of wages found owed; and

4. any findings, penalties, and business license suspensions or revocations that resulted from the wage claim.

The information on a claim shall be placed on the website not more than 30 days after the final determination or judgement is made.

A person commits the crime of pattern of wage nonpayment if the person knowingly commits an act that violates the provisions of N.J.S.2C:40A-2, N.J.S.2C:20-2 if the property stolen consists of compensation the employer failed to provide to an employee as required under the provisions of any State wage and hour law as defined in R.S.34:11-57, subsection a. of section 10 of P.L.1965, c.173 (C.34:11-4.10), or subsection a. of section 25 of P.L.1966, c.113 (C.34:11-56a24), if the person has, on two or more prior occasions, been convicted of a violation of the provisions of any of those laws. It shall not be a defense that the
violations were not part of a common plan or scheme, or did not
have similar methods of commission.
b. Pattern of wage non-payment is a crime of the third degree,
except that the presumption of nonimprisonment set forth in
subsection e. of N.J.S.2C:44-1 for persons who have not previously
been convicted of an offense shall not apply. Notwithstanding the
provisions of N.J.S.2C:1-8 or any other law, a conviction of pattern
of wage non-payment shall not merge with a conviction of violation
of N.J.S.2C:40A-2, N.J.S.2C:20-2, 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 any other criminal offense, nor
shall such other conviction merge with a conviction under this
section.
c. An employer found to be in violation of this section shall be
deemed to have caused loss to the employees in the amount by
which the employees were paid less than the full wages agreed upon
or required by law and shall be subject to the provisions of
N.J.S.2C:43-3 regarding fines and restitution to victims and be
subject to other pertinent provisions of Title 2C of the New Jersey
Statutes, including, but not limited to, N.J.S.2C:43-4, 2C:43-6 and
2C:44-1.¹

¹[14.] ²[13.] ³[14.] This act shall take effect immediately²,
except that section 13 shall take effect on the first day of the third
month following enactment².