

[First Reprint]

ASSEMBLY, No. 5838

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED NOVEMBER 14, 2019

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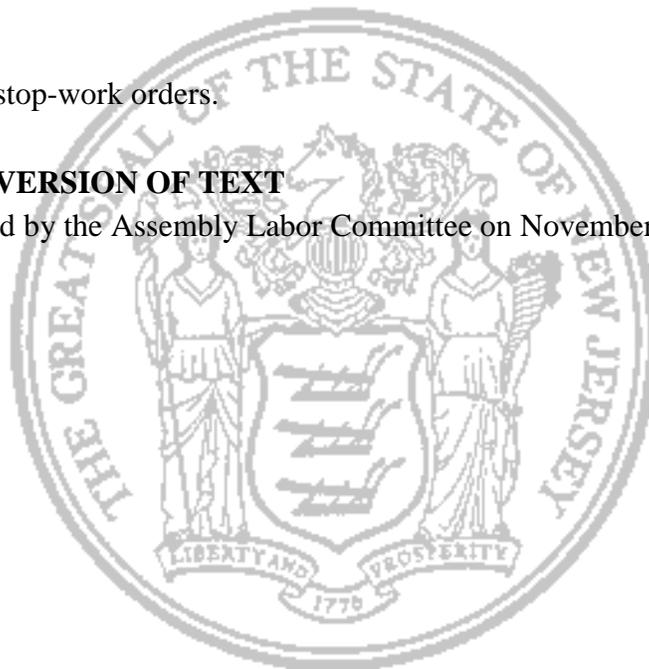
Senator Greenstein

SYNOPSIS

Concerns stop-work orders.

CURRENT VERSION OF TEXT

As reported by the Assembly Labor Committee on November 18, 2019, with amendments.



(Sponsorship Updated As Of: 1/10/2020)

1 AN ACT concerning the issuing of stop-work orders and
2 supplementing Title 34 of the Revised Statutes.

3

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

6

7 1. a. The Commissioner of Labor and Workforce Development
8 and any agent of the commissioner, upon receipt of a complaint or
9 through routine investigation for a violation of any State wage, benefit
10 and tax law, including a violation of R.S.34:15-79, or a failure to meet
11 obligations required by R.S.43:21-7 or R.S.43:21-14, is authorized to
12 enter, during usual business hours, the place of business or
13 employment of any employer of the individual to determine
14 compliance with those laws, and for that purpose may examine payroll
15 and other records and interview employees, call hearings, administer
16 oaths, take testimony under oath and take depositions.

17 b. The commissioner may issue subpoenas for the attendance of
18 witnesses and the production of books and records. Any employer or
19 agent of the employer who willfully fails to furnish time and wage
20 records as required by law to the commissioner or agent of the
21 commissioner upon request, or who refuses to admit the commissioner
22 or agent to the place of employment of the employer, or who hinders
23 or delays the commissioner or agent in the performance of duties in the
24 enforcement of this section, may be fined not less than \$1,000 and
25 shall be guilty of a disorderly persons offense. Each day of the failure
26 to furnish the records to the commissioner or agent shall constitute a
27 separate offense, and each day of refusal to admit, of hindering, or of
28 delaying the commissioner or agent shall constitute a separate offense.

29 c. (1) If the commissioner determines, after either an initial
30 determination as a result of an audit of a business or an investigation
31 pursuant to subsection a. of this section, that an employer is in
32 violation of any State wage, benefit and tax law, including a violation
33 of R.S.34:15-79, or a failure to meet obligations required by
34 R.S.43:21-7 or R.S.43:21-14, the commissioner may issue a stop-work
35 order against the employer requiring cessation of all business
36 operations of the employer at the specific place of business or
37 employment in which the violation exists. The stop-work order may
38 be issued only against the employer found to be in violation or non-
39 compliance. ¹The commissioner shall serve a notification of intent to
40 issue a stop-work order on the employer at the place of business or, for
41 a particular employer worksite, at that worksite at least seven days
42 prior to the issuance of a stop-work order.¹ The order shall be
43 effective when served upon the employer at the place of business or,
44 for a particular employer worksite, when served at that worksite. The
45 order shall remain in effect until the commissioner issues an order

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:

¹Assembly ALA committee amendments adopted November 18, 2019.

1 releasing the stop-work order upon finding that the employer has come
2 into compliance and has paid any penalty deemed to be satisfactory to
3 the commissioner, or after the commissioner determines, in a hearing
4 held pursuant to paragraph (2) of this subsection, that the employer did
5 not commit the act on which the order was based. The stop-work
6 order shall be effective against any successor entity engaged in the
7 same or equivalent trade or activity that has one or more of the same
8 principals or officers as the corporation, partnership or sole
9 proprietorship against which the stop-work order was issued. The
10 commissioner may assess a civil penalty of \$5,000 per day against an
11 employer for each day that it conducts business operations that are in
12 violation of the stop-work order.

13 (2) An employer who is subject to a stop-work order shall, within
14 72 hours of its receipt of the notification, have the right to appeal to
15 the commissioner in writing for an opportunity to be heard and contest
16 the stop-work order.

17 Within seven business days of receipt of the notification from the
18 employer, the commissioner shall hold a hearing to allow the employer
19 to contest the issuance of a stop-work order. The department and the
20 employer may present evidence and make any arguments in support of
21 their respective positions on the imposition of the misclassification
22 penalty. If a hearing is not held within seven business days of receipt
23 of the notification from the employer, an administrative law judge
24 shall have the authority to release the stop-work order. The
25 commissioner shall issue a written decision within five business days
26 of the hearing either upholding or reversing the employer's stop-work
27 order. The decision shall include the grounds for upholding or
28 reversing the employer's stop-work order. If the employer disagrees
29 with the written decision, the employer may appeal the decision to the
30 commissioner, in accordance with the "Administrative Procedure Act,"
31 P.L.1968, c.410 (C.52:14B-1 et seq.).

32 (3) As an alternative to issuing a stop-work order in accordance
33 with paragraph (1) of this subsection, if the commissioner determines,
34 after an investigation pursuant to subsection a. of this section, that an
35 employer is in violation of R.S.34:15-79, the commissioner may
36 provide and transfer all details and materials related to the
37 investigation under this section to the Director of the Division of
38 Workers' Compensation for any enforcement of penalties or stop-work
39 orders the director determines are appropriate.

40 d. For purposes of this section:

41 "Employer" means any individual, partnership, association, joint
42 stock company, trust, corporation, the administrator or executor of the
43 estate of a deceased individual, or the receiver, trustee, or successor of
44 any of the same, employing any person in this State. For the purposes
45 of this subsection the officers of a corporation and any agents having
46 the management of such corporation shall be deemed to be the
47 employers of the employees of the corporation.

48 "Employee" means any person suffered or permitted to work by an
49 employer, except a person performing services for remuneration

1 whose services satisfy the factors set forth in subparagraphs (A),(B),
2 and (C) of R.S.43:21-19(i)(6).

3 “Employ” means to suffer or permit to work.

4 “State wage, benefit and tax laws” means “State wage, benefit and
5 tax laws” as defined in section 1 of P.L.2009, c.194 (C.34:1A-1.11).

6 1e. Nothing in this section shall preclude an employer from
7 seeking injunctive relief from a court of competent jurisdiction if the
8 employer can demonstrate that the stop-work order would be issued or
9 has been issued in error.¹

10

11 2. This act shall take effect immediately.