

CHAPTER 87

AN ACT concerning certain violations of workers' compensation requirements and amending R.S.34:15-79.

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

1. R.S.34:15-79 is amended to read as follows:

Penalties for failure to carry insurance.

34:15-79. a. An employer who fails to provide the protection prescribed in this article, who misrepresents one or more employees as independent contractors, or who provides false, incomplete or misleading information concerning the number of employees, shall be guilty of a disorderly persons offense and, if the failure, misrepresentation or provision of false, incomplete or misleading information is knowing, shall be guilty of a crime of the fourth degree, and shall be subject to a stop-work order issued by the Director of the Division of Workers' Compensation pursuant to subsection e. of this section. In cases where a workers' compensation award in the Division of Workers' Compensation of New Jersey against the defendant is not paid at the time of the sentence, the court may suspend sentence upon that defendant and place him on probation for any period with an order to pay the delinquent compensation award to the claimant through the probation office of the county. Where the employer is a corporation, any officer who is actively engaged in the corporate business, including, but not limited to, the president, vice-president, secretary, and the treasurer thereof shall be liable for failure to secure the protection prescribed by this article. Any contractor placing work with a subcontractor shall, in the event of the subcontractor's failing to carry workers' compensation insurance as required by this article, become liable for any compensation which may be due an employee or the dependents of a deceased employee of a subcontractor. The contractor shall then have a right of action against the subcontractor for reimbursement.

b. A rebuttable presumption that an employer has established a successor firm, corporation or partnership shall arise if the two share at least three of the following capacities or characteristics: (1) perform similar work; (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; (7) utilize the same tools and equipment; (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. If it is determined that an employer has established a successor firm, corporation or partnership, the "uninsured employer's fund" shall have a subrogation right against the successor firm, corporation or partnership for any benefits paid pursuant to R.S.34:15-1 et seq. by the "uninsured employer's fund," the injured worker may seek benefits not otherwise paid or payable by the "uninsured employer's fund" from the successor firm, corporation or partnership, and the successor firm, corporation or partnership shall have all of the same responsibilities regarding workers' compensation required pursuant to R.S.34:15-1 et seq. as the original employer.

c. Failure to produce at the time of the trial or upon written request by the division proof of workers' compensation insurance coverage by a mutual association or stock company authorized to write coverage on such risks in this State or written authorization by the Commissioner of Banking and Insurance to self-insure for workers' compensation pursuant to R.S.34:15-77, which was in force for the time cited by the division, creates a rebuttable presumption that the employer was uninsured when charged with a violation of this section.

d. The Director of the Division of Workers' Compensation, or any officer or employee of the division designated by the director, upon finding that an employer has failed for a period of not less than 10 consecutive days to make the provisions for payment of compensation required by R.S.34:15-71 and R.S.34:15-72, shall impose upon that employer, in addition to all other penalties, fines or assessments provided for in chapter 15 of Title 34 of the Revised Statutes or in any supplement thereto, a penalty in the amount of up to \$5,000 and when the period exceeds 10 days, an additional penalty of up to \$5,000 for each period of 10 days thereafter. All penalties under this act shall be enforced and collected in accordance with section 12 of P.L.1966, c.126 (C.34:15-120.3). Failure or refusal to comply with a stop work order issued by the Director of the Division of Workers' Compensation pursuant to subsection e. of this section shall, in addition to any other penalties provided by law, result in the assessment of a penalty of not less than \$1,000 and not more than \$5,000 for each day found not to be in compliance. All penalties collected under this section shall be paid into the "uninsured employer's fund."

e. If the Director of the Division of Workers' Compensation determines, after investigation, that an employer knowingly failed to provide the protection prescribed in this article, knowingly misrepresented one or more employees as independent contractors, or knowingly provided false, incomplete or misleading information concerning the number of employees, the director shall issue, not later than 72 hours after making the determination, a stop-work order requiring the cessation of all business operations of that employer at every site at which the violation occurred. The order shall take effect when served upon the employer, or, for a particular employer worksite, when served at that worksite. The order shall remain in effect until the director issues an order releasing the stop-work order upon finding that the employer has come into compliance with the requirements of this section and has paid any penalty assessed under this section. A stop-work order issued pursuant to this section against an employer shall apply against any successor firm, corporation or partnership of the employer in the same manner that it applies to the employer. An employer who is subject to a stop-work order shall have the right to apply to the director, not more than 10 days after the order is issued, for a hearing to contest whether the employer committed the violation on which the order was based, and the hearing shall be afforded and a decision rendered within 48 hours of the application.

f. The Commissioner of Labor and Workforce Development shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate rules and regulations necessary to implement the provisions of this section.

2. This act shall take effect immediately.

Approved July 10, 2009.