

CHAPTER 194

AN ACT concerning the suspension or revocation of certain licenses for certain repeated violations of laws regarding wages, benefits and taxes, and supplementing Title 34 of the Revised Statutes.

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

C.34:1A-1.11 Definitions relative to suspension, revocation of certain employer licenses.

1. As used in this act:

"Agency" means any agency, department, board or commission of this State, or of any political subdivision of this State, that issues a license for purposes of operating a business in this State.

"Commissioner" means the Commissioner of Labor and Workforce Development.

"License" means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this State, and includes, but is not limited to:

(1) A certificate of incorporation pursuant to the "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq.;

(2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.;

(3) A statement of qualification or a statement of foreign qualification pursuant to the "Uniform Partnership Act (1996)," P.L.2000, c.161 (C.42:1A-1 et al.);

(4) A certificate of limited partnership or a certificate of authority pursuant to the "Uniform Limited Partnership Law (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

(5) A certificate of formation or certified registration pursuant to the "New Jersey Limited Liability Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.); and

(6) Any license, certificate, permit or registration pursuant to R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.); section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of P.L.1981, c.1 (C.56:8-1.1); 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:

(1) P.L.1965, c.173 (C.34:11-4.1 et seq.);

(2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.);

(3) The "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.);

(4) The workers' compensation law, R.S.34:15-1 et seq.;

(5) The "unemployment compensation law," R.S.43:21-1 et seq.;

(6) The "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);

(7) P.L.2008, c.17 (C.43:21-39.1 et al.); and

(8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

C.34:1A-1.12 Commissioner's actions relative to employer violations.

2. a. 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.

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 and continued in its failure to pay wages, benefits, taxes or other contributions or assessments as required by those laws, 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, 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).

C.34:1A-1.13 Presumption of successor firm.

3. A rebuttable presumption that an employer has established a successor firm shall arise if the two parties share two or more of the following capacities or characteristics:

- a. Performing similar work within the same geographical area;
- b. Occupying the same premises;
- c. Having the same telephone or fax number;
- d. Having the same e-mail address or Internet website;
- e. Employing substantially the same work force, administrative employees, or both;
- f. Utilizing the same tools, equipment or facilities;
- g. Employing or engaging the services of any person or persons involved in the direction or control of the other; or
- h. Listing substantially the same work experience.

C.34:1A-1.14 Notification of employer responsibility relative to record maintenance.

4. a. Each employer which is required to maintain and report records regarding wages, benefits, taxes and other contributions and assessments pursuant to State wage, benefit and tax laws, as defined in section 1 of this act, shall conspicuously post notification, in a place or places accessible to all employees in each of the employer's workplaces, in a form issued by regulation adopted by the commissioner, of the obligation of the employer to maintain and report those records. The employer shall also provide each employee a written copy of the notification not later than 30 days after the form of the notification is issued, or, if the employee is hired after the issuance, at the time of the employee's hiring. In adopting the regulation regarding the notification requirement, the commissioner shall, to the greatest extent practicable, design the notification in a manner which coordinates or consolidates the notification with any other notifications required pursuant to State wage, benefit and tax laws, as defined in section 1 of this act. The notification shall also provide information on how an employee or the employee'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 violations of the requirements of this act or any State wage, benefit and tax law, as defined in section 1 of this act, or may obtain information about any actual violation, including any audit undertaken pursuant to this act.

b. No employer shall discharge or in any other manner discriminate against an employee because the employee has made an inquiry or complaint to his employer, to the commissioner or to his authorized representative regarding any possible violation by the employer of the provisions of this act or any State wage, benefit and tax laws, as defined in section 1 of this act, or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act or those laws, or because the employee has testified or is about to testify in the proceeding.

c. Any employer who violates any provision of this section shall be guilty of a disorderly persons offense and shall, upon conviction, be fined not less than \$100 nor more

than \$1,000. In the case of a discharge or other discriminatory action in violation of this section, the employer shall also be required to offer reinstatement in employment to the discharged employee and to correct any discriminatory action, and to pay to the employee all reasonable legal costs of the action, all wages and benefits lost as a result of the discharge or discriminatory action, plus punitive damages equal to two times the lost wages and benefits, under penalty of contempt proceedings for failure to comply with the requirement.

5. This act shall take effect on the 180th day after the date of enactment, except that the Commissioner of Labor and Workforce Development shall take any anticipatory administrative action in advance of the effective date as is necessary for the implementation of this act. Concerns suspension and revocation of employer licenses for repeated violations of wage, benefit and tax laws.

Approved January 14, 2010.