

## CHAPTER 158

AN ACT concerning the issuing of stop-work orders, amending P.L.1963, c.150, and supplementing P.L.2007, c.114 (C.34:20-1 et seq.).

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

1. Section 11 of P.L.1963, c.150 (C.34:11-56.35) is amended to read as follows:

C.34:11-56.35 Penalties, stop-work orders.

11. (a) Any employer who willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in any day of which a worker is paid less than the rate applicable to him under this act and each worker so paid, shall constitute a separate offense.

(b) As an alternative to or in addition to any other sanctions provided by law for violations of any provision of P.L.1963, c.150 (C.34:11-56.25 et seq.), when the Commissioner of Labor and Workforce Development finds that an employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$2,500 for a first violation and up to a maximum of \$5,000 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 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) When the Commissioner of Labor and Workforce Development finds that the employer has violated provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may refer the matter to the Attorney General or his designee for investigation and prosecution. Nothing in this subsection shall be deemed to limit the authority of the

Attorney General to investigate and prosecute violations of the New Jersey Code of Criminal Justice, nor to limit the commissioner's ability to refer any matter for criminal investigation or prosecution.

(d) If the commissioner makes an initial determination that an employer has violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) by paying wages at rates less than the rates applicable under that act, whether or not the commissioner refers the matter to the Attorney General or other appropriate prosecutorial authority for investigation or prosecution pursuant to subsection (c) of this section, the commissioner may immediately issue a stop-work order to cease all business operations at every site where the violation has occurred. The stop-work order may be issued only against the employer found to be in violation or non-compliance. If a stop-work order has been issued against a subcontractor pursuant to this subsection, the general contractor shall retain the right to terminate the subcontractor from the project. The stop-work order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has agreed to pay wages at the required rate and has paid any wages due and any penalty deemed satisfactory to the commissioner. As a condition for release from a stop-work order, the commissioner may require the employer to file with the department periodic reports for a probationary period that shall not exceed two years that demonstrate the employer's continued compliance with the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). The commissioner may assess a civil penalty of \$5,000 per day against an employer for each day that it conducts business operations that are in violation of the stop-work order. That penalty shall be collected by the commissioner in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

C.34:20-7.1 Determination of compliance; subpoena; stop-work order.

2. a. The Commissioner of Labor and Workforce Development and any agent of the commissioner, upon receipt of a complaint or through a routine investigation for a violation of any wage and hour law or R.S.34:15-79, or a failure to meet obligations as provided in R.S.43:21-7 and R.S.43:21-14, is authorized to enter, during usual business hours, the place of business or employment of any employer of the individual to determine compliance with the wage and hour laws, R.S.34:15-79, R.S.43:21-7, or R.S.43:21-14, and for that purpose may examine payroll and other records and interview employees, call hearings, administer oaths, take testimony under oath and take depositions.

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

c. (1) If the commissioner determines, after either an initial determination as a result of an audit of a business or an investigation pursuant to subsection a. of this section, that an employer is in violation of any wage and hour law or of R.S.34:15-79, or has failed to meet obligations as provided in R.S.43:21-7 or R.S.43:21-14, the commissioner may issue a stop-work order against the employer requiring cessation of all business operations of the

employer at the specific place of business or employment in which the violation exists. The stop-work order may be issued only against the employer found to be in violation or non-compliance. If a stop-work order has been issued against a subcontractor pursuant to this subsection, the general contractor shall retain the right to terminate the subcontractor from the project. The order shall be effective when served upon the employer at the place of business or, for a particular employer worksite, when served at that worksite. The order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has come into compliance and has paid any penalty deemed to be satisfactory to the commissioner, or after the commissioner determines, in a hearing held pursuant to paragraph (2) of this subsection, that the employer did not commit the act on which the order was based. The stop-work order shall be effective against any successor entity engaged in the same or equivalent trade or activity 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.

(2) An employer who is subject to a stop-work order shall have the right to appeal to the commissioner. The contractor may notify the Director of the Division of Wage and Hour Compliance of its request for an opportunity to be heard and contest the stop work order in writing within 72 hours of its receipt of the notification.

Within seven business days of receipt of the notification from the contractor, the director shall hold a hearing to allow the contractor to contest the issuance of a stop work order. The director shall permit the contractor to present evidence at the hearing. If the director fails to hold a hearing within seven business days of receipt of the notification from the contractor, an administrative law judge shall have the authority to release the stop-work order.

The director shall issue a written decision within five business days of the hearing either upholding or reversing the contractor's stop work order. The decision shall include the grounds for upholding or reversing the contractor's stop work order.

If the contractor disagrees with the written decision, the contractor may appeal the decision to the commissioner, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

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

3. This act shall take effect immediately.

Approved July 9, 2019.