ASSEMBLY, No. 5843

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED NOVEMBER 14, 2019

Sponsored by:
Assemblywoman SHANIQUE SPEIGHT
District 29 (Essex)
Assemblyman ANTHONY S. VERRELLI
District 15 (Hunterdon and Mercer)
Assemblyman PAUL D. MORIARTY
District 4 (Camden and Gloucester)

Co-Sponsored by:
Assemblmen Danielsen, DeAngelo, Assemblywomen Timberlake, McKnight and Assemblyman Houghtaling

SYNOPSIS
Requires employers to post notice for employees on employee misclassification.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 12/17/2019)
AN ACT concerning employee misclassification and supplementing
Title 34 of the Revised Statutes.

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

1. Post notices about misclassification. a. Each employer
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 P.L.2009,
c.194 (C.34:1A-1.11), 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 the commissioner,
explaining:

   (1) The prohibition against employers misclassifying
employees;

   (2) The standard delineated in paragraph (6) of subsection (i) of
R.S.43:21-19 that is applied by the department to determine
whether an individual is an employee or an independent contractor;

   (3) The benefits and protections to which an employee is
entitled under State wage, benefit and tax laws;

   (4) The remedies under New Jersey law to which workers
affected by misclassification may be entitled; and

   (5) Information on how a worker or a worker’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 worker
misclassification.

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 possible worker
misclassification, or because the employee has caused to be
instituted or is about to cause to be instituted any proceeding
regarding worker misclassification under State wage, benefit and
tax laws, or because the employee has testified in the proceeding.

c. An 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 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.
2. Information regarding worker misclassification. The Department of Labor and Workforce Development shall maintain a webpage that contains information regarding:
   (a) The prohibition against employers misclassifying employees;
   (b) The standard delineated in paragraph (6) of subsection (i) of R.S.43:21-19 that is applied by the department to determine whether an individual is an employee or an independent contractor;
   (c) The benefits and legal protections to which an employee is entitled under State wage, benefit and tax laws;
   (d) The remedies under New Jersey law to which workers affected by misclassification may be entitled; and
   (e) Information on how a worker or a worker’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 worker misclassification.

3. This act shall take effect on the first day of the third month next following enactment, except that the Commissioner of Labor and Workforce Development may take any anticipatory action in advance as shall be necessary for the implementation of this act.

STATEMENT

This bill requires employers to post a notice for their employees regarding employee misclassification. Specifically, under the bill, an employer is required to conspicuously post notification, in a place or places accessible to all employees in each of the employer’s workplaces, in a form issued by the commissioner, explaining:

1. The prohibition against employers misclassifying employees;
2. The standard that is applied by the department to determine whether one is an employee or an independent contractor;
3. The benefits and protections to which an employee is entitled under State wage, benefit and tax laws;
4. The remedies under New Jersey law to which workers affected by misclassification may be entitled; and
5. Information on how a worker or a worker’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 worker misclassification.

The bill prohibits an employer from discharging or in any other manner discriminating against an employee because the employee has made an inquiry or complaint to his employer, to the
commissioner or to his authorized representative regarding possible worker misclassification, or because the employee has caused to be instituted or is about to cause to be instituted any proceeding regarding worker misclassification under State wage, benefit and tax laws, or because the employee has testified in the proceeding.

Under the bill, an employer who violates any of those provisions will be guilty of a disorderly persons offense and will, upon conviction, be subject to a fine. An employer will also be required to offer reinstatement in employment to a discharged employee and to correct any discriminatory action, and to pay 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.

Finally, the bill requires the Department of Labor and Workforce Development to maintain a webpage that contains information regarding employee misclassification.