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ALERT

New Jersey Enacts Series of Worker-Friendly Laws Increases Burdens and Penalties on Employers for Misclassifying Employees

By Bennett Pine

On January 21, 2020, New Jersey Gov. Phil Murphy signed a series of laws that are decidedly pro-employee. The laws stiffen penalties on employers for misclassifying individuals as independent contractors; require businesses to pay severance to workers affected by mass layoffs; impose joint liability on businesses and managers; and provide for new notice posting requirements. The laws follow a blueprint for pro-employee legislation established in liberal states like New York and California.

The new laws are summarized as follows:

Severance Pay for Workers Facing Plant Closings or Mass Layoffs

Senate Bill 3170: Businesses with 100 or more full-time employees must pay their workers one week of severance pay for each year of service when there is a downsizing or plant closure affecting 50 or more employees. Employers also will be required to provide workers with at least 90 days' advance notice of such actions, increased from 60 days' notice under the federal WARN (Worker Adjustment and Retraining Notification) Act.

If businesses fail to provide the 90-day advance notice, they will be required to provide workers with an additional four weeks of severance pay.

The sponsors of this legislation made it clear that the law was motivated by employers like Toys R Us that declared bankruptcy and closed stores and other facilities suddenly, leaving thousands of New Jersey employees without severance pay or employee benefits.

Penalties for Worker Misclassification

Assembly Bill 5839: The New Jersey Department of Labor and Workforce Development will be authorized to assess fines against employers who intentionally misclassify workers as independent contractors or other non-employees. The penalties are up to \$250 per

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misclassified employee for a first violation and up to \$1,000 for each subsequent violation.

In addition, employers found to have misclassified employees will be required to pay those individuals up to 5% of their gross earnings over the prior *annual* period. Employers must first be apprised of the proposed penalty and will have an opportunity to request a hearing.

Joint and Potential Manager Liability

Assembly Bill 5840: A business that enters into an arrangement with a labor contractor will share legal liability with the contractor for any civil violations of the New Jersey wage or tax law, including state laws regarding the misclassification of employees as independent contractors.

In addition — and this is particularly controversial — any person *acting on an employer's behalf*, including owners, officers or *managers*, may be held personally liable as the employer for the violation. Critics of the legislation have said that this provision may result in a situation where mid- or low-level managers may unknowingly and unfairly be left “holding the bag” for employer violations of the wage laws, particularly where the employer is insolvent, judgment-proof or otherwise not available.

New Posting Requirements

Assembly Bill 5843: Employers will be required to conspicuously post notices for workers that describe worker misclassification issues, including posters with information regarding how and to whom they can report alleged worker misclassification, and the fines and penalties for misclassification.

The posters must also make it clear that any retaliation against an individual who complains of being potentially misclassified is strictly forbidden, and give notice of penalties in the event of retaliation.

Conclusion

The new laws signed by Gov. Murphy, particularly those designed to address the hot-button issue of workers being misclassified as independent contractors, provide significant new protections and rights for New Jersey employees. ▲

