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New Jersey Cracks Down on Independent Contractor Misclassification and Wage Statements

Several new laws impact worker classification and pay statements, and New Jersey employers must implement necessary changes in a timely manner to remain compliant.

Increased DOL Oversight and Penalties for Worker Misclassification

To police the misclassification of employees as independent contractors, Governor Murphy signed five new bills into law. These laws are aimed to curtail the misclassification of employees as independent contractors and to hold employers jointly– and in some cases *personally* – liable for violating applicable tax and benefit laws.

Four laws became effective as of January 20:

1. The New Jersey Department of Labor and Workforce Development (NJDOL) can issue a stop-work order to an employer upon the finding of violations of state wage, benefit, and tax laws, upon seven days of notice. The stop-work order applies to every location where a violation has occurred, and remains in effect until further order of the NJDOL. Further, the NJDOL can assess a penalty of up to $5,000/day for every day the stop-work order is violated.

2. The NJDOL is authorized to independently assess penalties for misclassified employees of $250 for the first violation and up to $1,000 for each violation, per employee.

3. The Division of Taxation is now authorized to share confidential information such as statements, reports, audit files, and tax returns with the NJDOL to assist with investigations of worker misclassification.

4. The Wage Theft Act expands joint and several liability for violations of New Jersey's tax laws to "any person acting on behalf of an employer, including a client employer or labor contractor." Previously the law imposed joint and several liability only for violations of New Jersey's wage laws.

Since April 1, employers are required to post, in prominent places, the rights and responsibilities of workers relating to classification as an independent contractor vs. an employee. Specifically, the law requires notices explaining the bar on misclassification of workers as independent contractors; definitions of what constitutes an employee or an independent contractor; the rights of employees and independent contractors; the remedies for workers who believe they have been misclassified; and the contact information where workers can report complaints on misclassification issues.

Additional Information Required in Wage Statements

New Jersey's Wage Payment Law was amended effective May 20 and requires employers to provide expanded information to employees in their wage statements in order to promote more transparency and accuracy for employee pay. Under the previous law, employers were required to provide only a statement of deductions to their employees. The new Wage Payment Law requires employers with 10 or more employees to include the following additional information on wage statements: (1) gross wages; (2) net wages; (3) rate of pay; and (4) the number of hours worked during the pay period, if relevant to pay calculation. The employer is permitted to provide the wage statements electronically unless a paper copy is specifically requested. A failure to provide this information carries a $250 fine for the first violation and up to $500 for each subsequent violation.

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