
No More Misclassification: New Jersey Draws the Line

Legal Alert

August 11, 2021

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On July 8, 2021, New Jersey Governor Phil Murphy signed four bills aimed at cracking down on employers who misclassify independent contractors as employees. In a press release, the Governor's office lauded this legislative package as a continuation of Governor Murphy's goal to provide tools for tackling employee misclassification, which began with the Governor's 2018 Executive Order that created the Misclassification Task Force. Here are the highlights of each bill passed:

- Assembly Bill No. 1171 requires the Commissioner of Labor and Workforce Development (the "Commissioner") to create a Statewide database of certified payroll information for certain public works projects. A contractor will now be required to file payroll statements with both the relevant public body for which it is completing the work and the Commissioner, whereas contractors were only required to file with the relevant public body prior to this enactment.
- Assembly Bill No. 5890 grants the Commissioner additional enforcement options in the Office of Administrative Law and in the courts. Employers who do not cooperate with the Commissioner's investigations may be subject to subpoena, fines up to \$1,000 per day, and possible 10 to 90 days jail time for refusing to maintain and report every record required by State wage, benefit and tax laws. This law went into effect immediately on July 8, 2021.
- Assembly Bill No. 5891 establishes the Office of Strategic Enforcement and Compliance (the "Office"), which is created to oversee New Jersey's wage, benefit and tax laws. This bill sets aside \$1 million for this purpose. This Office shall provide business assistance to those requesting businesses who are in "substantial good standing" with the State.
- Assembly Bill No. 5892 makes employee misclassification for the purpose of evading payment of insurance premiums or other employee-related benefits a violation of the New Jersey Fraud Prevention Act. It also specifies penalties for when misclassification occurs, and provides the New Jersey Department of Banking and Insurance resources to investigate such misclassifications. The Commissioner is authorized to levy civil penalties against employers who violate this law and can request the Office of the Insurance Fraud Prosecutor consider bringing charges against the offender. This bill goes into effect on January 1, 2022.

This package is the latest in a series of measures aimed at curbing employer wage and hour law abuses and misclassification. The takeaway for employers is that the State's enforcement toolbox continues to expand, creating additional risks for employers who are found to misclassify workers. In this context, employers should note that New Jersey uses the "ABC test", which is more stringent standard for determining whether a worker is an independent contractor or employee than the standard applied in many other jurisdictions.

If your business needs assistance navigating these changes and ensuring compliance, consider contacting Adam Gersh at Flaster Greenberg, or any member of Flaster Greenberg's Labor & Employment or Business & Corporate Departments.