

Governor Phil Murphy Signs a Legislative Package which He states is Meant to Combat “Worker Misclassification and Exploitation.”

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In the wake of New Jersey Legislative Bills A5838 – A5843 and S4228, which recently were signed into law by Governor Phil Murphy, and the impact thereof on the classification of independent truckers in and throughout the State, transportation industry members must take immediate action to ensure that they are complying with such legislation, or they could face several newly enacted (additional) penalties.

Under **Legislative Bill A5839**, such additional penalties include those for improperly classifying employees as *independent contractors* --- punishable by fines, per each misclassified employee, of up to \$250 for the first violation, and \$1,000 per each subsequent violation, **PLUS** a penalty of up to five (5%) percent of any misclassified employee’s gross earnings over the preceding twelve (12) months, based upon the circumstances and the employer’s violation-history.

Pursuant to **Legislative Bill A5840**, penalties assessed for an employer’s violation of any State wage and hour laws, or, as a result of the Bill, for State employer tax laws (i.e. workers’ compensation law, unemployment compensation law, temporary disability benefits law and the NJ Gross Income Tax Act), may also be imposed jointly and severally against (i) any “labor contractor providing workers to the client employer,” and/or (ii) any “person acting on behalf of an employer” including not only the employer’s owners, directors, officers, and managers, but also, expressly, labor contractors acting on an employer’s behalf.

Under **Legislative Bill A5843**, an employer may also be found guilty of a “disorderly persons” offense if such employer fails to post a conspicuous notice in a place reasonably accessible to all employees, explaining (i) the prohibition against employers misclassifying employees, (ii) the New Jersey Department of Labor and Workforce Development (“LWD”) standard for worker-classifications, (iii) the benefits, protections, and remedies afforded to employees under the State labor laws, and (iv) contact information for the LWD Commissioner’s office.

Legislative Bill A5838 enlarges the LWD’s enforcement power to issue a stop-work order to any employer whom the LWD Commissioner has determined has violated any State wage, benefit, or tax law (e.g., requirements relating to carrying insurance, report pension/retirement, etc.) to (i) provide for a penalty of \$5,000 per day against an employer conducting business operations in violation of any issued stop-work

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order, but to (ii) require 7-days' notice of any stop-work order to the employer, within which time the employer may seek injunctive relief.

Also in aid of the LWD's enforcement of the State wage, benefit, and tax laws, **Legislative Bill S4228** permits the Director of the Division of Taxation to furnish to the LWD Commissioner "any information, including, but not limited to, tax information statements, reports, audit files, returns," and investigative reports.

Largely as a result of the opposition of independent truck drivers, proposed Legislative Bill S4204 (which would have otherwise effectively re-defined how independent contractors are classified in the State) was not simultaneously passed with the above legislation, and was instead vetoed by Governor Murphy. However, transportation industry members should take cautious note that Senate President Stephen M. Sweeney (D) has expressed his intention to reintroduce that legislative bill at the next legislative session. If passed, "individuals who perform services for remuneration shall be deemed employees, not independent contractors, unless and until it is demonstrated otherwise to the satisfaction of the LWD Commissioner that the worker is truly independent from the employer, as measured using certain enumerated criteria."

Legislative Bill S863 was also vetoed by Governor Murphy on January 8, 2020. Similar to Legislative Bill S4204, Legislative Bill S863 would effectively (i) redefine employees, as all "individuals who are suffered or permitted to work," until true independence is proven to the LWD Commissioner, and (ii) make all such individuals subject to, and entitled to, all rights and remedies under, the State employment laws. Again, transportation industry members should take cautious note that this piece of legislation also potentially could be reintroduced and passed down the road given its majority support in the State legislature.

If you have any questions, or desire any additional information, please do not hesitate to reach out to our Firm through our Transportation Group's co-chairmen Anthony J. Vizzoni, Esq. (ajvizzoni@becker.legal) or Joseph G. Harraka, Jr., Esq. (jgharraka@becker.legal) via email, or by phone at (973) 422-1100.

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