

New Law Subjects New Jersey Employers To Severe Penalties For Willfully Misclassifying Workers

by **Patrick Lucignani and Dean Silverberg**

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On July 10, 2009, New Jersey Governor Jon S. Corzine signed legislation allowing the state's Division of Workers' Compensation (the "Division") to impose criminal penalties and issue a stop-work order against an employer found to have knowingly: (1) failed to provide workers' compensation coverage; (2) misrepresented employees as independent contractors; or (3) provided false, incomplete or misleading information concerning its number of employees. This amendment to New Jersey's Workers' Compensation Law, N.J.S.A. 34:15-1 et seq., becomes effective immediately.

Under the new law, an employer who is found to have unknowingly committed one or more of the above violations is guilty of a disorderly persons offense. Where, however, the Director of the Division determines after investigation that the employer committed a knowing violation, the penalty is upgraded to a fourth-degree criminal offense against not only the employing business-entity, but potentially against officers of a corporation, and is punishable by up to 18 months in prison and \$10,000 in fines. The Workers' Compensation Law adopts the criminal definition of "knowingly":

A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence. A person acts knowingly with respect to a result of his conduct if he is aware that it is practically certain that his conduct will cause such a result.

Within 72 hours of determining that an employer knowingly violated the law, the Division must issue a stop-work order, halting that employer's business operations at every job site where violations are deemed to have occurred. The stop-work order applies equally against any successor firm, corporation or partnership. Work may resume only after the employer becomes compliant with the law and has paid any assessed penalty. Employers who fail to comply with a stop work order are subject to

a mandatory penalty of \$1,000 to \$5,000 per day.

An employer has the right to apply to the Division for a hearing to contest the finding of violation within 10 days after the issuance of a stop-work order. The hearing must be held, and a decision rendered, within 48 hours of the application. Thus, under the statutory scheme, an employer's operations could be shut down for as many as 12 days (10 days for employers to request a hearing and two days for a decision to be rendered) before an accusation of a violation is proved (or disproved).

In the wake of the enactment of this legislation, New Jersey employers who engage independent contractors must be vigilant in ensuring that their workers are properly classified, and that all eligible employees are covered by the employer's workers' compensation policy. By taking appropriate preventative measures, employers may avoid substantial monetary losses and business disruption not only from the new law, but as well as from the growing number of state and federal government regulatory inquiries and audits regarding worker classification, and individual and class action lawsuits brought by current or former workers challenging their classifications.

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