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New Law Imposes Severe Penalties For Companies Who Violate New Jersey's Wage, Benefits and Tax Laws

Client Advisories

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As a result of a law passed in the twilight of Governor John Corzine's administration, companies who repeatedly violate New Jersey's wage, benefits, or tax laws may be subject to new and severe penalties by the Commissioner of the New Jersey Department of Labor and Workforce Development ("NJDOL"), including the suspension or revocation of their licenses to operate. While this recent legislation is aimed at curbing repeated violations, it increases the importance of demonstrating full compliance at every NJDOL audit. The new law was passed on January 14, 2010, but does not take effect until July 13, 2010.

The new law provides that once a company has failed -- for even one employee -- to maintain all required documentation regarding wages, benefits and taxes and has failed to pay the wages, benefits, taxes or other contributions due, the company will not only face the ordinary fines or penalties, it will now have to face an audit within 12 months after the initial determination. Critically, if that audit reveals that that the company has again failed to maintain records and pay wages, benefits or taxes, the NJDOL now has the power to direct other governmental agencies to suspend or revoke State-issued licenses held by the offending company. This includes certificates of incorporation or formation, licenses or permits issued pursuant to the Public Works Contractor Registration Act, the New Jersey Alcoholic Beverage Control Act, the workers' compensation laws, the unemployment compensation law, and many others. The NJDOL has the discretion to decide how long any license suspension is in effect, and the only protection offered to businesses is a right to a hearing before any final order takes effect.

In a nutshell, this "second strike" at the NJDOL audit could result in a company's complete inability to do business in New Jersey. Companies who have their licenses suspended or revoked will not be allowed to reopen utilizing a new name. The new law covers successor companies and broadly includes the suspension of such companies as well. For example, a company that merely has the same phone number and e-mail address as the offending company will be presumed to be a successor.

Starting July 13, 2010, all New Jersey employers will be required to post a notice in a form prescribed by the NJDOL and provide every employee with a written copy of such notice. The notice will include information such as how an employee may contact an NJDOL representative to report violations of this law. This applies to every business, not just those found to have violated the wage, benefit or tax laws. As of the time of this advisory, the NJDOL has not yet issued the final form of this notice, but it should be available on the NJDOL website later this year.

The new law also states that employers cannot discharge or discriminate against an employee because he/she has made an inquiry or complaint under this law to his employer. In the event that an employer does terminate an employee under these circumstances, the employer will be required to offer reinstatement of employment to the discharged employee, to pay all legal costs, all wages and benefits lost, plus punitive damages equal to two times the lost wages and benefits.

By this new law, the legislature has made it abundantly clear that there is no such thing as a routine NJDOL audit or a run-of-the-mill employee wage or tax complaint. All New Jersey employers need to ensure that they are maintaining adequate records, that they are properly classifying their employees or independent contractors, and that they are properly withholding taxes. More importantly, if a violation has occurred, businesses must promptly correct any deficiencies before the upcoming NJDOL audit, in order to avoid the risk of the NJDOL closing the company's doors.

If you have any questions about this new law, please contact Archer's Labor and Employment Department at (856) 795-2121.

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