

Warning to Employers: Business Licenses Can Be Revoked For Failure To Comply With Employment Laws.



Knapp, Trimboli & Prusinowski, LLC

210 Park Avenue
Suite 302
Florham Park, NJ 07932
(973) 660-1095
www.ktplawyers.com

On January 14, 2010, with remarkably little fanfare, Acting Governor Stephen M. Sweeney signed into law a troubling piece of legislation that imposed new penalties for violations of wage, benefit and tax laws, extended extraordinary powers to the Commissioner of Labor and Workplace Development to impose an economic "death penalty" on non-compliant businesses, and exposed employers to potential disorderly persons liability simply for failing to post the required notice to employees.

The law took effect on July 13, 2010, and took on new importance on November 7, 2011, when the State finally released the mandatory notice form called for under the law. All businesses in New Jersey should be familiar with the requirements of this law.

A. Suspension and Revocation of Business Licenses

This new law empowers the Commissioner to require any agency, department, board, commission or political subdivision of the State that issues licenses for purposes of conducting a business to suspend or revoke the license of an employer whom the Commissioner finds to have engaged in "continued" failure to maintain and report records and make payments required by the State's wage, benefit and tax laws. If the employer is subsequently found to have continued to violate those laws, the Commission is then authorized to direct the revocation of the license.

The State wage, benefit and tax laws covered by this enactment include the New Jersey Prevailing Wage Act, the New Jersey State Wage and Hour law, the Workers Compensation law, the Unemployment Compensation law, the Temporary Disability Benefits Law, the recently-enacted paid family leave law, and the New Jersey Gross Income Tax Law.

The licenses subject to suspension and revocation include **any** permit, certificate, approval, registration, charter or similar authorization required by law and issued for the purposes of operating a business in the State. These include, but are **not** limited to, Certificates of Incorporation; Certificates of Authority; Statements of Qualification or Statements of Foreign

Qualification issued under the Uniform Partnership Act; Certificates of Limited Partnership; Certificates of Formation or Certified Registration; and any license, certificate, permit or registration issued under the Alcoholic Beverage Control Act or the Public Works Contractor Registration Act.

Specifically, when the Commissioner determines that an employer has failed to maintain or report **every** record regarding wages, benefits and taxes that is required by the State's wage, benefit and tax laws, and has failed to pay **any** wage, benefit, tax or other contribution or assessment required by those laws, the Commissioner shall conduct an audit of the employer and any successor firm of the employer within twelve (12) months. If the audit reveals "continued failures" to report and make any required payments, the Commissioner is authorized to issue a determination requiring all other agencies in the State to suspend the employer's business licenses (or those of the employer's successor) for a period of time to be determined by the Commissioner. All other agencies are required to comply with the Commissioner's rulings in this regard.

The Commissioner must then conduct a second audit not later than twelve months (12) after the date of his/her initial determination. If the employer or its successor then is found to be in continued violation, the Commissioner shall then issue a written determination directing that all business licenses be revoked. Once again, all other agencies in the State must comply.

The employer or its successor is entitled to notice and an opportunity for an administrative hearing before either suspension or revocation may be imposed.

However, the Commissioner makes the ultimate determination.

This new enactment is extraordinary in that it allows the Commissioner of Labor and Workforce Development to override every other agency and political subdivision of the State that is otherwise responsible for issuing business-related licenses. It also vests the Commissioner with the discretion to determine the length of any license suspension, regardless of the rules and standards that the issuing authority may have promulgated. Finally, the new law allows the Commissioner to circumvent any suspension/revocation procedures the issuing authority may have adopted.

B. Posting and Anti-Retaliation Provisions

The law imposes new posting and notice requirements for all employers. Every employer that is required by State law to maintain and report records regarding wages, benefits, taxes and other contributions and assessments must now conspicuously post a notification, in a place accessible to all employees in **each** of the employer's workplaces, setting forth the employer's obligations to maintain and report those records. The notice must be in a form prescribed by the Commissioner. The employer must also provide each employee with a written copy of this notification not later than thirty (30) days after the prescribed form is issued, and thereafter at the time of an employee's hiring. The notification must instruct employees and their unions how they may provide information or file complaints regarding possible violations of State wage, benefit and tax laws. The notice must also advise how employees and their unions may obtain information

about any actual violation and any audit undertaken. Any employer who violates this provision shall be guilty of a disorderly persons offense and shall, upon conviction, be fined not less than \$100 nor more than \$1,000.

The mandatory posting form was not released by the Commissioner until November 7, 2011. The mandatory form must be posted in conspicuous locations, and a copy made available to every employee, starting December 7, 2011, except that employees hired on or after November 7, 2011, must be given a copy immediately upon hire. The mandatory posting can be obtained and printed from the New Jersey Department of Labor and Workforce Development website at the following address:

http://lwd.state.nj.us/labor/forms_pdfs/EmployerPosterPacket/MW-400.pdf

Electronic notice may be permitted in certain circumstances.

In addition, the new law makes it unlawful for an employer to discharge or "in any other manner discriminate" against an employee because that employee has made an inquiry or complaint to his employer, to the Commissioner, or to the Commissioner's authorized representative regarding any possible violation by the employer of State wage, benefit and tax laws or of any provision of this new law; because the employee has instituted or intends to institute a proceeding under or related to those laws; or, because the employee has testified or is about to testify in such a proceeding. In addition to a possible disorderly persons conviction, an employer who violates this anti-retaliation provision shall be

required to offer the employee reinstatement, to correct any discriminatory action, and to pay to the employee all reasonable legal costs, all wages and benefits lost, **plus punitive damages equal to two times the lost wages and benefits.** Failure to comply with these remedial provisions will subject the employer to the penalty of contempt.

This law affects every business in the State. It vests enormous power in the Commissioner of Labor and Welfare Development to dictate terms to every State agency, officer or municipality that issues business licenses. It grants the Commissioner broad discretion to penalize offending employers and, indeed, to impose an economic death penalty. Compliance with record keeping and payment requirements will become critical. Now would be an excellent time to consider conducting your own internal audit to assure you are in compliance with State wage, benefit and tax laws - - and not wait for your business licenses to be placed in jeopardy.

By: Stephen E. Trimboli, Esq.

Knapp, Trimboli & Prusinowski handles labor and employment, corporate governance, and commercial litigation matters for small and mid-sized companies and public bodies in New Jersey and the New York metropolitan area.