



LABOR & EMPLOYMENT DEPARTMENT

# ALERT

## EMPLOYERS MAY LOSE THEIR OPERATING LICENSES FOR VIOLATING NEW JERSEY'S WAGE, BENEFIT AND TAX LAWS

By Eileen Powers

New Jersey is cracking down on businesses that attempt to gain an unfair competitive advantage by paying employees “off the books” or otherwise ignoring their legal obligations under the state’s wage, benefit and tax laws. Effective July 10, 2010, employers who repeatedly violate the payment, recordkeeping or reporting provisions of the state’s Prevailing Wage Act, Wage and Hour Law, Temporary Disability Benefits Law, Gross Income Tax Act, workers’ compensation law or unemployment compensation law will no longer be able to remedy these violations solely by paying the wages, benefits and taxes otherwise due in addition to a monetary fine. Instead, pursuant to recently passed legislation, employers may lose their operating licenses – temporarily or permanently – for repeatedly violating any of these laws.

The law, signed by acting Gov. Stephen Sweeney on January 14, 2010, authorizes the Commissioner of Labor and Workforce Development to audit any employer who fails to:

- (1) lawfully pay or otherwise compensate its employees, or
- (2) properly maintain or report all employee wage, benefit and tax records.

If an audit reveals continuing violations of the state’s wage, benefit or tax laws, the Commissioner may suspend the employer’s operating licenses, including, but not limited to, its certificate of incorporation, limited partnership or formation and liquor licenses.

The length of an employer’s license suspension will depend on a number of factors, including:

- (1) the number of employees affected by the violations;
- (2) the total amount of wages, benefits or taxes not paid or provided;
- (3) the duration of the violation; and
- (4) the employer’s prior misconduct.

The Commissioner shall also audit the employer a second time within 12 months of the initial license suspension. If the employer is still violating the state’s wage, benefit or tax laws, the Commissioner may direct the appropriate licensing agency to permanently revoke any one or more of the employer’s operating licenses. However, the Commissioner may not suspend or revoke a license without first giving the employer proper notice and providing an opportunity for a hearing.

The penalties imposed by this new law should not be taken lightly, and employers should recognize that these penalties are in addition to and not in lieu of any other penalties (or damages) to which the state or an employee may otherwise be entitled. An employer may be audited if it fails to properly report the wages of even a single employee. Companies that pay workers “off the books” or otherwise violate the payment, recordkeeping and reporting provisions of the state’s wage, benefit and tax laws must bring their operations into compliance with these laws by July 10, 2010. Failure to do so may not

only damage a business financially but also result in the total cessation of its operations.

Of particular interest is the law's requirement that the Commissioner develop a form of notice that employers will need to post and provide to their existing and newly hired employees. At this time, the form of notice is not yet available. Finally, the law prohibits an employer from discriminating or retaliating against an employee who has made an inquiry or complaint to his employer, the state or his authorized representative under the law or

any of the laws referenced in it. This anti-retaliation provision also extends to actions taken with respect to formal proceedings and an employee being a witness in those proceedings.

If you have any questions about this new law or how to comply with any of New Jersey's wage, benefit or tax laws, please contact Eileen Powers at 609.895.3319 or [epowers@foxrothschild.com](mailto:epowers@foxrothschild.com) or any other member of Fox Rothschild's Labor and Employment Department.



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