New Laws Seek to End Worker Misclassification

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On January 20, 2020, Governor Phil Murphy signed a comprehensive package of employee-friendly bills aimed at eliminating worker misclassification once and for all. The bills further strengthen the ability of New Jersey's Department of Labor and Workplace Development (NJDOL) to enforce state wage, benefit, and tax laws by expanding the penalties faced by employers found to have misclassified employees.

The new laws seek to protect workers' rights by ensuring that they are correctly classified as employees, entitling them to numerous benefits and rights under the law. Businesses found to have violated wage, benefit or tax laws may be subject to the following:

- Administrative Penalty – up to $250 per misclassified employee for the first violation and $1000 for each subsequent violation;
- Reparative Penalty – paid to the misclassified worker, up to 5% of his or her gross earnings over the preceding twelve months;
- Operations Shut-Down – a stop-work order may issue to shut down plant/operations;
- Placement on Public List of Violators – employers featured on the list of violators (available on the NJDOL's website) may be prohibited from contracting with public bodies pending complete administrative resolution.

In addition to administrative actions, the new laws further expose employers to possible civil lawsuits. Effective April 1, 2020, employers will be required to post a detailed notice in an area accessible to all workers outlining the prohibition against employee misclassification. The new laws create a private cause of action for wrongful discharge or discrimination against any worker who inquires or complains about his or her suspected misclassification.

Because worker classification dictates an employer's payroll tax liability, the new laws allow the Treasury Department to share with the NJDOL confidential tax information, audit files, returns, and any other data that would assist in investigating businesses suspected of wage, benefit or tax law violations.

Failure to appropriately classify employees subjects employers to a host of significant consequences that could have devastating effects on business. Employers should conduct a comprehensive review of their workers' classification status and exercise caution in classifying future contractors. Consultation with legal counsel is advised to avoid violation and ensure compliance with the new laws.