

[Second Reprint]

ASSEMBLY, No. 3310

STATE OF NEW JERSEY
215th LEGISLATURE

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Sponsored by:

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District 38 (Bergen and Passaic)

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District 38 (Bergen and Passaic)

SYNOPSIS

Concerns payment of independent contractors.

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 20, 2013.



1 AN ACT concerning the payment of independent contractors and
2 supplementing chapter 11 of Title 34 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 “Client” means a sole proprietorship, partnership, corporation,
9 limited liability company, association or other business entity or a
10 nonprofit organization contracting with an independent contractor
11 in any occupation, industry, trade, business or service for
12 compensation equal to or greater than \$600. The term “client” does
13 not include a person or any governmental entity¹, or a general acute
14 care facility licensed by the Commissioner of Health and Senior
15 Services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), including
16 rehabilitation, psychiatric, and long-term acute facilities¹.

17 “Commissioner” means the Commissioner of Labor and
18 Workforce Development.

19 “Compensation” means the earnings of an independent
20 contractor. The term “compensation” includes reimbursement for
21 expenses.

22 “Independent contractor” means a sole proprietor who is not an
23 employee and who is hired or retained by a client for an amount
24 equal to or greater than \$600.

25

26 2. An independent contractor shall be paid the compensation
27 earned in accordance with agreed work terms¹. If an independent
28 contractor and client did not agree on a date for payment of
29 compensation earned, the independent contractor shall be paid the
30 compensation earned¹ not later than the last day of the month
31 following the month in which the compensation is earned. The
32 agreed work terms shall be in writing, signed by ²**[both the client**
33 **and]²** the independent contractor, kept on file by the client for a
34 period of not less than six years, and made available to the
35 commissioner upon request. The agreed work terms shall include a
36 description of how compensation that is earned and payable shall be
37 calculated. The failure of a client to provide the written work terms,
38 upon request of the commissioner, shall give rise to a presumption
39 that the terms that the independent contractor has presented are the
40 agreed work terms.

41

42 3. The commissioner shall investigate, and attempt to adjust
43 equitably, controversies between clients and independent

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted October 15, 2012.

²Assembly floor amendments adopted June 20, 2013.

1 contractors. The commissioner may take assignments of claims for
2 compensation from independent contractors or representatives of
3 independent contractors. The commissioner may bring any legal
4 action necessary to collect a claim for compensation, and the client
5 shall be required to pay the costs and reasonable attorney's fees as
6 may be allowed by the court.

7
8 4. Any independent contractor may file with the commissioner
9 a complaint regarding a violation of section 2 of this act for an
10 investigation of the complaint and statement setting the appropriate
11 remedy, if any. Failure of a client to keep adequate records shall not
12 constitute a bar to the filing of a complaint by an independent
13 contractor. In a case in which the client fails to keep or provide
14 adequate records the client shall bear the burden of proving that the
15 complaining independent contractor was paid the compensation
16 earned in accordance with agreed work terms.

17
18 5. The commissioner may bring any legal action necessary,
19 including administrative action, on behalf of any independent
20 contractor paid less than the compensation to which the independent
21 contractor is entitled under the agreed work terms pursuant to this
22 act. In addition to any remedies provided pursuant to any other laws
23 of this State, the commissioner may assess against the client an
24 additional amount as liquidated damages, unless the client proves a
25 good faith basis for believing that its underpayment of
26 compensation was in compliance with this act. Liquidated damages
27 shall be calculated by the commissioner as no more than 100% of
28 the total amount of compensation found to be due to the
29 independent contractor. In any action instituted in the courts upon a
30 compensation claim by an independent contractor, or the
31 commissioner, in which the independent contractor prevails, the
32 court shall allow such independent contractor all reasonable
33 attorney's fees and, unless the client proves a good faith basis to
34 believe that its underpayment of compensation was in compliance
35 with this act, an additional amount as liquidated damages equal to
36 100% of the total amount of compensation found to be due to the
37 independent contractor. The remedies provided by this section may
38 be enforced simultaneously or consecutively so far as not
39 inconsistent with each other.

40
41 6. Notwithstanding any law, rule, or regulation to the contrary,
42 an action to recover upon a liability imposed by this act must be
43 commenced within six years. All independent contractors shall have
44 the right to recover the full amount of compensation accrued during
45 the six years previous to the commencing of the action, whether that
46 action is instituted by the independent contractor or the
47 commissioner.

1 7. a. The commissioner shall provide to each independent
2 contractor who files a complaint regarding a violation of a provision
3 of this act with a description of the anticipated processing of the
4 complaint, including the investigation, case conference, potential
5 civil and criminal penalties, and collection procedures.

6 b. Each independent contractor and the representative of the
7 independent contractor, if any, shall be notified in a timely manner
8 by the commissioner of the following:

9 (1) Any case conference before it is held, with the opportunity
10 to attend; and

11 (2) Any award and collection of back compensation, civil
12 penalties, any intent to seek criminal penalties, and, in the event
13 that criminal penalties are sought, a notification of the outcome of
14 prosecution.

15

16 8. If the commissioner determines that a client has violated a
17 provision of this act by failing to pay the compensation of an
18 independent contractor, the commissioner shall issue to the client an
19 order directing compliance therewith, which shall describe
20 particularly the nature of the alleged violation. In addition to
21 directing payment of compensation found to be due, the order, if
22 issued to a client who previously has been found in violation of a
23 provision of this act, or to a client whose violation is willful or
24 egregious, shall be subject to a civil penalty in an amount equal to
25 double the total amount of compensation found to be due,
26 collectible by the commissioner in a summary proceeding pursuant
27 to the "Penalty Enforcement Law of 1999," P.L.1999, c.274
28 (C.2A:58-10 et seq.).

29

30 9. Any client who does not pay the compensation of its
31 independent contractors in accordance with the provisions of this
32 act, and the officers, agents, or representatives of any client who
33 knowingly permit the client to violate the provisions of this act by
34 failing to pay the compensation of any of its independent
35 contractors in accordance with the provisions of this act, shall be
36 guilty of a disorderly persons offense for the first offense, and in the
37 event that any second or subsequent offense occurs within six years
38 of the date of conviction for a prior offense, shall be guilty of a
39 crime of the fourth degree for each offense.

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41 10. This act shall take effect immediately.