

SENATE, No. 2496

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED JANUARY 28, 2013

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Concerns payment of independent contractors.

CURRENT VERSION OF TEXT

As introduced.



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 entity, 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 facilities.

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 terms. 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 earned 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 both the client and
33 the independent contractor, kept on file by the client for a period of
34 not less than six years, and made available to the commissioner
35 upon request. The agreed work terms shall include a description of
36 how compensation that is earned and payable shall be calculated.
37 The failure of a client to provide the written work terms, upon
38 request of the commissioner, shall give rise to a presumption that
39 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
44 contractors. The commissioner may take assignments of claims for
45 compensation from independent contractors or representatives of
46 independent contractors. The commissioner may bring any legal
47 action necessary to collect a claim for compensation, and the client

1 shall be required to pay the costs and reasonable attorney's fees as
2 may be allowed by the court.

3
4 4. Any independent contractor may file with the commissioner
5 a complaint regarding a violation of section 2 of this act for an
6 investigation of the complaint and statement setting the appropriate
7 remedy, if any. Failure of a client to keep adequate records shall not
8 constitute a bar to the filing of a complaint by an independent
9 contractor. In a case in which the client fails to keep or provide
10 adequate records the client shall bear the burden of proving that the
11 complaining independent contractor was paid the compensation
12 earned in accordance with agreed work terms.

13
14 5. The commissioner may bring any legal action necessary,
15 including administrative action, on behalf of any independent
16 contractor paid less than the compensation to which the independent
17 contractor is entitled under the agreed work terms pursuant to this
18 act. In addition to any remedies provided pursuant to any other laws
19 of this State, the commissioner may assess against the client an
20 additional amount as liquidated damages, unless the client proves a
21 good faith basis for believing that its underpayment of
22 compensation was in compliance with this act. Liquidated damages
23 shall be calculated by the commissioner as no more than 100% of
24 the total amount of compensation found to be due to the
25 independent contractor. In any action instituted in the courts upon a
26 compensation claim by an independent contractor, or the
27 commissioner, in which the independent contractor prevails, the
28 court shall allow such independent contractor all reasonable
29 attorney's fees and, unless the client proves a good faith basis to
30 believe that its underpayment of compensation was in compliance
31 with this act, an additional amount as liquidated damages equal to
32 100% of the total amount of compensation found to be due to the
33 independent contractor. The remedies provided by this section may
34 be enforced simultaneously or consecutively so far as not
35 inconsistent with each other.

36
37 6. Notwithstanding any law, rule, or regulation to the contrary,
38 an action to recover upon a liability imposed by this act must be
39 commenced within six years. All independent contractors shall have
40 the right to recover the full amount of compensation accrued during
41 the six years previous to the commencing of the action, whether that
42 action is instituted by the independent contractor or the
43 commissioner.

44
45 7. a. The commissioner shall provide to each independent
46 contractor who files a complaint regarding a violation of a provision
47 of this act with a description of the anticipated processing of the

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1 complaint, including the investigation, case conference, potential
2 civil and criminal penalties, and collection procedures.

3 b. Each independent contractor and the representative of the
4 independent contractor, if any, shall be notified in a timely manner
5 by the commissioner of the following:

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

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

12

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

26

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

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38 10. This act shall take effect immediately.

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STATEMENT

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43 This bill provides that an independent contractor must be paid
44 the compensation earned according to work terms agreed to by the
45 independent contractor and its client, and requires the Department
46 of Labor and Workforce Development to act as a regulatory agency
47 in certain circumstances regarding these work agreements.

1 Under the bill, an independent contractor must be paid the
2 compensation earned in accordance with the agreed work terms. If
3 an independent contractor and client did not agree on a date for
4 payment of compensation earned, then the independent contractor
5 shall be paid the compensation earned not later than the last day of
6 the month following the month in which the compensation is
7 earned. The bill also provides that work terms, agreed to by the
8 independent contractor and the client, shall be in writing, signed by
9 both parties, kept on file by the client for a period of not less than
10 six years, and made available to the Commissioner of Labor and
11 Workforce Development upon request.

12 The bill requires the commissioner to investigate, and attempt to
13 adjust equitably, controversies between clients and independent
14 contractors. The commissioner may take assignments of claims for
15 compensation from independent contractors, or agents or
16 representatives of independent contractors. The commissioner may
17 also bring any legal action necessary to collect a claim for
18 compensation.

19 The bill provides that any independent contractor may file with
20 the commissioner a complaint regarding a violation of the
21 requirement to pay compensation to an independent contractor, for
22 an investigation of the complaint and a statement setting the
23 appropriate remedy, if any. In a case in which the client fails to
24 keep or provide adequate records, the client will bear the burden of
25 proving that the complaining independent contractor was paid the
26 compensation earned in accordance with agreed work terms.

27 The bill provides that the commissioner may bring any legal
28 action necessary, including administrative action, on behalf of any
29 independent contractor paid less than the compensation to which the
30 independent contractor is entitled under the agreed work terms. The
31 commissioner may also assess against the client an amount as
32 liquidated damages, unless the client proves a good faith basis for
33 believing that its underpayment of compensation was in compliance
34 with the provisions of this bill. Liquidated damages must be
35 calculated by the commissioner as no more than 100% of the total
36 amount of compensation found to be due to the independent
37 contractor.

38 In any action instituted in the courts upon a compensation claim
39 by an independent contractor or the commissioner in which the
40 independent contractor prevails, the bill requires the court to allow
41 the independent contractor all reasonable attorney's fees and, unless
42 the client proves a good faith basis to believe that its underpayment
43 of compensation was in compliance with the provisions of this bill,
44 an additional amount as liquidated damages equal to 100% of the
45 total amount of compensation found to be due to the independent
46 contractor.

47 Further, any action to recover compensation pursuant to the
48 provisions of the bill must be commenced within six years. Under

1 the bill independent contractors have the right to recover the full
2 amount of compensation accrued during the six years previous to
3 the commencing of the action, whether that action is instituted by
4 the independent contractor or the commissioner.

5 Each independent contractor who files a complaint regarding a
6 violation of a provision of this bill will be provided with a
7 description of the anticipated processing of the complaint, including
8 the investigation, case conference, potential civil and criminal
9 penalties, and collection procedures by the commissioner. Each
10 independent contractor and the representative of the independent
11 contractor, if any, will be notified in a timely manner by the
12 commissioner of the following:

13 1. Any case conference before it is held, with the opportunity
14 to attend; and

15 2. Any award, collection of back compensation, civil penalties,
16 any intent to seek criminal penalties, and, in the event that criminal
17 penalties are sought, a notification of the outcome of prosecution.

18 The bill also provides that if the commissioner determines that a
19 client has failed to pay the compensation of its independent
20 contractors, the commissioner shall issue to the client an order
21 directing payment, which will describe particularly the nature of the
22 alleged failure to pay. In addition to directing payment of
23 compensation found to be due, the order, if issued to a client who
24 previously has been found in violation of a provision of this bill, or
25 to a client whose violation is willful or egregious, will be subject to
26 a civil penalty in an amount equal to double the total amount of
27 compensation found to be due.

28 The bill provides that any client who does not pay the
29 compensation of all of its independent contractors in accordance
30 with the provisions of this bill, and the officers, agents, or
31 representatives of any client who knowingly permit the client to
32 violate the provisions of this bill, will be guilty of a disorderly
33 persons offense for a first offense, and in the event that any second
34 or subsequent offense occurs within six years of the date of
35 conviction for a prior offense, will be guilty of a crime of the fourth
36 degree. A disorderly persons offense is punishable by a term of
37 imprisonment up to six months, a fine not to exceed \$1,000, or
38 both. A crime of the fourth degree is punishable by a term of
39 imprisonment up to 18 months, a fine not to exceed \$10,000, or
40 both.