

NJ Legislation to Further Strengthen Construction Industry Employees' Rights is Pending; Governor Murphy Establishes Task Force on Employee Misclassification

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On April 12, 2018, the New Jersey Senate unanimously passed Senate Bill No. 345, which requires employers within the construction industry to notify employees of certain rights. The bill acts as a supplement to the 2007 Construction Industry Independent Contractor Act, which addressed a common practice of misclassifying employees as independent contractors in the construction industry.

The misclassification of an employee as an independent contractor inevitably results in the deprivation of certain benefits that the individual may otherwise be entitled to if they were classified as an employee. The Construction Industry Independent Contractor Act defines who qualifies as an employee or independent contractor, and imposes penalties for misclassifying workers. The Act prohibits retaliation, discrimination, or other adverse action against persons who allege violations of the Act, and also prohibits the employer from requiring or requesting that an individual sign an agreement which results in a misclassification. The Act further allows a construction worker to bring a civil cause of action for failing to properly classify the employee.

The pending bill requires those employers subject to the 2007 Construction Industry Independent Contractor Act to conspicuously post a notification of the rights of employees' to unemployment benefits, minimum wage, overtime and other federal and state workplace protections, as well as the protections against retaliation and the penalties provided for under existing law.

The new legislation also requires employers to provide a written copy of the notification to workers "(1) not later than 30 days after the form of the notification is issued by the commissioner; (2) at the time of the individuals hiring, if the individual is hired after the issuance; and (3) at any time, upon the first request of the individual." The notification must be made available in English, Spanish, and any other language the Commissioner of Labor and Workforce Development determines is the first language of a significant number of workers in the state. The notification must also indicate how an individual may contact a representative of the Commissioner to provide information to, or file a complaint about possible violations related to Senate Bill No. 345 or the Construction Industry Independent Contractor Act. Finally, the bill imposes penalties upon employers who violate any provision of the bill.

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On May 3, 2018, Governor Phil Murphy signed Executive Order No. 25 which establishes the Task Force on Employee Misclassification. The task force, among other things, will be responsible for providing advice and recommendations to the governor's office and the executive branch on strategies and actions to combat employee misclassification. It was established to address the misclassification of employees as independent contractors which "deprives New Jersey workers of important legal rights and protections as well as certain employment related benefits, including unemployment insurance, workers' compensation, and disability benefits."

Senate Bill No. 345 will now be considered by the New Jersey Assembly. In the interim, employers should review their worker classification practices and ensure compliance with existing wage and labor laws relating to overtime, minimum wage, and unemployment benefits as well as other federal and state workplace protections available to employees.

For additional information regarding employment-related issues in the construction industry, please contact **Punam P. Alam**, the author of this Alert.