

New Jersey To Maintain Public List Available Online of Employers Who Fail to Satisfy Outstanding Liabilities Under the State's Wage, Benefit, And Tax Laws

Labor and Employment Alert

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On August 8, 2023, the New Jersey Department of Labor and Workforce Development (DOL) implemented the Workplace Accountability in Labor List (the WALL) — a public list, accessible through the DOL website, that includes the names of employers found to be in violation of New Jersey State wage, benefit and tax laws and have outstanding liabilities to the DOL. Such liabilities might include unpaid wages or unemployment insurance contributions to the State.

Employers may appear on the WALL following a final order or judgment issued by the DOL. The DOL will issue its final order or judgment whenever an employer fails to pay or successfully challenge an assessment against it for failing to meet obligations under any of: The New Jersey Wage Payment Law, The New Jersey Prevailing Wage Act, The New Jersey State Wage and Hour Law, The Workers' Compensation Law, the Unemployment Compensation Law, the Temporary Disability Benefits Law, N.J.S.A. 43:21-39.1 (which relates to compensation for family temporary disability leave), or the New Jersey Gross Income Tax Act.

Any person, as defined by the DOL, is subject to being placed on the WALL if found in violation of any of the above laws. For purposes of the WALL, "person" means any natural person, company corporate officer or principal, firm, association, corporation, contractor, subcontractor, or other entity engaged in contracting.

If placed on the WALL, a business may not contract with any State entity, including agencies, counties, local governments, or their subdivisions. Additionally, each listing on the WALL shows not only the name of the employer, but the law or laws it is charged with violating, together with monetary amounts owed.

In deciding whether to place a business on the WALL, DOL considers:

1. Record of previous violations;
2. Previous placement on the list by the commissioner;
3. The frequency of violations by the person discovered in previous or still pending cases;
4. The significance or scale of the violations;
5. The existence of failure to pay;
6. Failure to cooperate or respond to a request to produce records, forms, documents, or proof of payments;
7. Submission of falsified or altered records, forms, documents or proof of payment;
8. Failure to provide goods or services; and
9. Failure to comply with contract specifications.

Before listing a business on the WALL, DOL must first issue a Notice of Intent stating that the business will appear on the WALL within 15 business days from the date listed on the Notice. To challenge DOL's assessment, the business must, within 20 days of receiving a Notice, request a hearing in writing. If timely received, DOL will not list the business on the WALL, pending the outcome of the appeal.

Prior to commencing a hearing, DOL will commence an informal settlement conference, during which the parties may exchange evidence.

During the hearing process, DOL will not consider evidence that the outstanding liability was wrongly decided or that a final order or judgment against the business had been issued in error. Nor will it reconsider the amount of any preexisting assessment, such as the wages, penalties or interest owed to the State or to employees. For example, if a business has been placed on the WALL following a judgment for unpaid unemployment insurance contributions after the employer had misclassified its employees, the business may not challenge the underlying substantive finding of worker misclassification. Nor may the business challenge the amount of wages, contributions or penalties owed.

Likewise, businesses may not use the informal settlement conference as an opportunity to contest a judgment docketed against it. If the business believes a judgment was docketed in error, then it must challenge that judgment in the Superior Court of New Jersey in the county where the business is located. Note that filing suit in Superior Court will not delay posting of the business's name to the WALL. In this scenario, removal from the WALL, and resumption of public contracting, will occur only if the business is successful in vacating the judgment.

Once DOL has determined that a business has paid all outstanding liabilities owed to DOL, its name will be removed from the WALL within 15 days and the business will receive a written Notice of Removal informing them that it is eligible to resume public contracting (assuming, of course, that the business is not disqualified from public contracting for other reasons, such as an expired license, or pursuant to the three-year debarment period required by New Jersey's Prevailing Wage Law).

If you have any questions, please contact any member of the Labor and Employment Group.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.