

[51 N.J.R. 1463\(a\)](#)

VOLUME 51, ISSUE 18, SEPTEMBER 16, 2019

RULE ADOPTIONS

Reporter

51 N.J.R. 1463(a)

***NJ - New Jersey Register > 2019 > SEPTEMBER > SEPTEMBER 16, 2019 > RULE ADOPTIONS
> LABOR AND WORKFORCE DEVELOPMENT -- OFFICE OF THE COMMISSIONER***

Agency

LABOR AND WORKFORCE DEVELOPMENT > OFFICE OF THE COMMISSIONER

Administrative Code Citation

Adopted New Rules: [N.J.A.C. 12:4](#)

Text

Suspension and Revocation of Employer License for Non-Compliance with State Wage, Benefit, and Tax Laws

Proposed: May 6, 2019, at 51 N.J.R. 533(a).

Adopted: August 15, 2019, by Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Filed: August 15, 2019, as R.2019 d.098, **without change**.

Authority: [N.J.S.A. 34:1-20](#).

Effective Date: September 16, 2019.

Expiration Date: September 16, 2026.

Summary of Hearing Officer's Recommendations and Agency's Response:

A public hearing regarding the proposed new rules was held on May 23, 2019, at the Department of Labor and Workforce Development. David Fish, Executive Director, Legal and Regulatory Services, was available to preside at the public hearing and to receive testimony. Three individuals testified at the public hearing. Written comments were submitted directly to the Office of Legal and Regulatory Services. After reviewing the written comments and the testimony from the public hearing, the hearing officer recommended that the Department proceed with adoption of the new rules without change.

Summary of Public Comments and Agency Responses:

Written comments were submitted by Alida Kass, President and Chief Counsel, New Jersey Civil Justice Institute, Trenton, New Jersey. The following individuals testified at the May 23, 2019 public hearing:

DAVID FISH

1. Alida Kass, President and Chief Counsel, New Jersey Civil Justice Institute, Trenton, New Jersey.
2. Eric DeGesero, Edge Consulting, Cranford, New Jersey.
3. Patrick Stewart, Public Strategies Impact, Trenton, New Jersey.
4. Bruce Shapiro, Deputy Director of Regulatory Affairs, New Jersey Realtors, Trenton, New Jersey.

The submitted comments and the Department's responses are summarized below.

1. COMMENT: The commenter objects to the Department's proposed definition of the phrase, "in connection with" to mean "either related factually or causally, or discovered during the same investigation, a contemporaneous or a near contemporaneous investigation, regardless of whether related factually or causally." Specifically, the commenter asserts that the Department's proposed definition of the phrase, "in connection with," fails to require the sort of "relationship between the failure to record and report, and the failure to pay compensation" that was envisioned by the Legislature, adding, "[t]he statute ... requires more than a mere coexistence of a 'violation of requirements to report and record wages' and a 'failure to pay wages, benefits and taxes.'" The commenter maintains that the proposed definition would "largely read the phrase 'in connection with' out of the statute," adding, "[b]y its terms, the definition would require no factual relationship; nor would it require that violations be discovered in same investigations, or even a contemporaneous investigation; [r]ather, a 'near contemporaneous investigation' would suffice."

The commenter observes that in "other contexts, New Jersey courts have not been receptive to similar attempts to read a causal connection out of the phrase, ['in connection with']." Specifically, the commenter states that when New Jersey's forfeiture statute provided for the forfeiture of a vehicle used "in connection with" the violation of drug laws, the court observed that, "one does not properly, or at any event ordinarily, speak of two matters as being 'connected' when they have nothing in common but a coexistence in point of time." [Ben Ali v. Towe, 30 N.J. Super. 19, 24 \(App. Div. 1954\)](#). According to the commenter, the court in *Ben Ali* concluded that the phrase, "in connection with," requires a "tie of causality or dependency," and, therefore, denied the seizure of the car which the defendant had been driving at the time of his arrest for possession of cocaine, as the car, "did not, in the slightest degree, aid [the defendant] in committing the crime; the crime was not in any measure dependent on the car."

Finally, the commenter asserts that the Department's proposed definition for the phrase, "in connection with," is inconsistent with the "legislative history" of [N.J.S.A. 34:1A-1.12](#), citing as evidence, the Statement to the Senate Committee Substitute for S2773, which, according to the commenter, indicates that [N.J.S.A. 34:1A-1.12](#) was enacted to target employers who "gain unfair competitive advantage," by employing workers "off the books"-- "choosing to ignore record-keeping requirements and evade the payment of legally-required wages, benefits and taxes."

RESPONSE: As reflected in the bill statement quoted by the commenter, the law's purpose is to target employers who gain unfair competitive advantage by choosing to ignore recordkeeping requirements and evade the payment of legally required wages, benefits, or taxes. The Department's definition for the phrase "in connection with" seeks to achieve precisely that end; which is to say, it is the Department's position that when, in the same investigation, contemporaneous investigations, or nearly contemporaneous investigations, it is discovered that for one or more employees an employer has failed to maintain and report all required records and also has "evad[ed] the payment of legally-required wages, benefits and taxes," the two actions are part of a pattern or practice that has enabled the violator to gain the unfair competitive advantage the law seeks to eliminate. It should not matter whether the triggering violations--one recordkeeping/reporting and the other failure to pay wages, benefits, or taxes -- pertain to the same employee, nor should it matter whether those violations are discovered during the same investigation. For, when an employer, as part of an overall scheme to gain an unfair competitive advantage, both enriches himself or herself at the expense of his or her workers by failing to pay legally required wages, benefits, or taxes and seeks to evade detection of his or her scheme by State regulators through failing to keep records and submit reports required under the State's wage, benefit, and tax laws, the failure to maintain and report records and the failure to pay wages, benefits, or taxes are, in fact, connected. Consequently, such an employer should, under [N.J.S.A.](#)

[34:1A-1.11](#) et seq., be subject to heightened scrutiny by the State and where such violations persist, such an employer should be subject to the law's enhanced penalties. It is the Department's understanding that this is the law's purpose. It is the Department's belief that its proposed definition of the phrase "in connection with," is consistent with that purpose.

Turning to *Ben Ali*, *supra.*, separate and apart from the myriad factors that distinguish a case involving use of the phrase "in connection with" in the context of a criminal matter involving forfeiture of property, from use of the phrase "in connection with" relative to an administrative/civil penalty for violations of State wage, benefit, and tax laws, the commenter's summary of the court's analysis in *Ben Ali* is not entirely accurate. That is, the phrase at issue in *Ben Ali* was not simply "in connection with," but rather, "used in, for or in connection with;" which [page=1464] is to say, at issue in *Ben Ali* was whether an automobile confiscated by police incident to an arrest for cocaine possession had been "used in, for or in connection with" the violation. In the court's analysis, it separated its discussion into multiple parts: the first, whether the car had been "used for the violation;" second, whether the car had been "used in connection with" the violation; and finally, whether the car had been "used in" the violation. Certain of the court's conclusions attributed by the commenter to its analysis of the phrase, "in connection with" actually relate to its analysis of other parts of the larger phrase, "used in, for or in connection with" or to the court's analysis of the larger phrase as a whole. Consequently, the Department believes the commenter's reliance on the holding in *Ben Ali* is misplaced.

2. COMMENT: Regarding the Department's proposed definition of the term "license," the commenter states the following:

The term "license" is already defined in the existing statute to include any authorization that is required by law and issued by any agency "for the purpose of operating a business in this State." The definition lists six specific examples, and while not an exhaustive list, the examples are all consistent with the description in the statutory definition--authorization "for the purposes of *operating* a business."

The proposed rulemaking would add a seventh category to the definition: professional licenses. This addition departs from the scope of the statutory definition, adding a uniquely dissimilar category that pertains not to authorization to *operate* a business, but to the authority to *work* as a licensed professional--including working for someone else's business.

The inclusion of professional licenses also would interfere with statutory authority of licensing boards under [NJ Rev Stat 45:1-21](#) (2013). The proposed language claims for the Department of Labor the authority to "direct" any appropriate agency to suspend or revoke a professional license. The authority to make such determinations has been statutorily delegated to the licensing boards themselves.

RESPONSE: As the commenter notes, the list of permits, certificates, approvals, registrations, charters, or similar forms of authorization included within the law's definition of the term "license" is "not an exhaustive list." Indeed, the Legislature chose to use the following phrase introductory to the list: "includes, but is not limited to." Consequently, the Department clearly has the authority by rule to add to that list types of permits, certificates, approvals, registrations, charters, or similar forms of authorization that it believes are appropriate for inclusion. As to the appropriateness of adding to the list "[a]ny agency permit, certificate, approval, registration, charter, or similar form of permission to engage in a profession, trade, or occupation in New Jersey," it is the Department's position that such licenses are, in fact, issued for the purpose of operating a business. One must certainly possess such a license in order to operate certain businesses: for example, one must be licensed as an accountant in order to operate a business in accountancy; one must be a licensed architect in order to operate an architecture business; one must be a licensed electrical contractor in order to operate an electrical contracting business; one must be a licensed dentist in order to operate a dentistry business. The possession of such licenses is a privilege, not a right, and just as such licenses may be suspended or revoked by their respective licensing agencies for certain unbecoming conduct (not necessarily related to the level of professional skill possessed by the licensee), including dishonest business practices, it is the Department's position that the Legislature intended for its authority under [N.J.S.A. 34:1A-1.11](#) et seq., to include the authority to direct the suspension or revocation of such a license possessed by an employer who chooses to ignore recordkeeping requirements under the State's wage, benefit, and

tax laws and evade the payment of legally required wages, benefits, or taxes, thereby enriching himself or herself at the expense of workers. In other words, if an accountant does not maintain proper client accounts and records related to such accounts or misappropriates client monies, the Board of Accountancy may suspend or revoke the accountant's license. Similarly, the Board of Electrical Contractors may act against the license of an electrical contractor who repeatedly cheats customers by taking their money without completing the promised work. The Department believes that the Legislature intended to hold various professionals to a similar standard when they cheat the people who work for them. Stealing the wages of workers; evading one's responsibility as an employer to contribute on behalf of workers to the unemployment compensation and State disability benefits funds, thereby starving those funds of resources needed to pay for the unemployment compensation, temporary disability benefits, and family leave insurance benefits of his or her employees and potentially interfering with his or her employees' ability to collect unemployment compensation, temporary disability benefits, and family leave insurance benefits; failing to maintain records required under the State's wage, benefit, and tax laws, so as to conceal these unlawful practices; all to unjustly enrich oneself and gain an unfair advantage over one's competitors -- the Legislature intended that repeated instances of these dishonest business practices, no less onerous than the cheating of one's clients or customers, result in the possible suspension or revocation of the licenses that the employer who engages in these practices requires for the purpose of operating his or her business in the State. The Legislature's intent is underlined by the grant of authority to the Commissioner to suspend or revoke licenses issued by "any agency" for the purpose of operating a business in this State when, under the circumstances outlined in [N.J.S.A. 34:1A-1.12](#), an employer, as part of an overall scheme to gain an unfair competitive advantage, both enriches himself or herself at the expense of his or her workers by failing to pay legally required wages, benefits, or taxes and seeks to evade detection of his or her scheme by State regulators through failing to keep records and submit reports required under the State's wage, benefit, and tax laws. The Department firmly believes this authority should extend to any agency permit, certification, approval, registration, charter, or similar form of permission to engage in a profession, trade, or occupation in New Jersey. It should be noted that under the proposed new chapter, each licensee subject to an order of the Commissioner issued under [N.J.S.A. 34:1A-1.11](#) et seq., would have the right to appeal the license suspension or revocation and would be entitled to a hearing conducted in accordance with the Administrative Procedure Act (APA), [N.J.S.A. 52:14B-1](#) et seq., and [52:14F-1](#) et seq., and the Uniform Administrative Procedure Rules.

As to the commenter's assertion that inclusion of professional licenses would interfere with the statutory authority of licensing boards, [N.J.S.A. 34:1A-1.12](#) expressly authorizes the Commissioner to "issue a written determination **directing any appropriate agency** to suspend any one or more licenses that are held by the employer," or to "issue a written determination **directing any appropriate agency** to permanently revoke any one or more licenses that are held by the employer." It is clear that the Legislature envisioned a form of dual authority--the boards continuing to regulate matters related to the expertise of their respective professions, and the Commissioner exercising his authority and expertise with regard to enforcement of State wage, benefit and tax laws. [N.J.S.A. 34:1A-1.12\(b\)](#) and (c) state unequivocally relative to suspension and revocation, respectively, that if, in the predicate audit or inspection, the Commissioner determines that the employer has continued in its failure to maintain or report records as required under State wage, benefit, and tax laws and has continued in its failure to pay wages, benefits, taxes, or other contributions or assessments as required by those laws, the Commissioner, after affording the employer an opportunity for a hearing in accordance with the APA, *may* under subsection (b) for a second offense issue a written decision "directing any appropriate agency" to suspend any one or more licenses held by the employer, and *shall* under subsection (c) for a third offense issue a written decision "directing any appropriate agency" to permanently revoke any one or more licenses held by the employer. The law makes clear that the matter will be adjudicated under the APA **by the Commissioner**, not by the licensing body, and that after having been afforded the opportunity for a hearing before the Commissioner under the APA, the Commissioner will issue a written determination "directing" the licensing body to take action (either suspension or revocation of the license).

3. COMMENT: The comments of Ms. Kass and Mr. DeGesero during the public hearing addressed the same concerns raised by Ms. Kass in her written comments, summarized in Comments 1 and 2.

RESPONSE: The Department's responses to the comments of Ms. Kass and Mr. DeGesero are identical to the responses to Ms. Kass' written comments. Those responses are listed above.

4. COMMENT: Mr. Stewart asserts that the proposed new rules empower the Commissioner "to impose punitive measures that are beyond the scope of his statutorily enumerated authority."

[page=1465] RESPONSE: [N.J.S.A. 34:1A-1.11](#) et seq., expressly authorizes the Commissioner to impose the sanctions enumerated within the proposed new rules. [N.J.S.A. 34:1A-1.12\(a\)](#) expressly authorizes the Commissioner to conduct a follow-up audit within 12 months after he finds that an employer has failed to comply with the reporting or recordkeeping requirements of any State wage, benefit, or tax law, and in connection with that failure to report or maintain records, has failed to pay wages, benefits, taxes, or other contributions or assessments as required by any State wage, benefit, or tax law. [N.J.S.A. 34:1A-1.12\(b\)](#) states that where at the conclusion of such an audit the Commissioner finds that the employer has failed to comply with the reporting or recordkeeping requirements of any State wage, benefit, or tax law, and has failed to pay wages, benefits, taxes, or other contributions or assessments as required by a State wage, benefit, or tax law, the Commissioner may issue a written determination directing any appropriate agency to suspend any one or more licenses that are held by an employer. Under [N.J.S.A. 34:1A-1.12\(c\)](#), where at the conclusion of a subsequent audit conducted within 12 months after the date of the Commissioner's earlier written determination, the Commissioner finds that the employer has yet again failed to comply with the reporting or recordkeeping requirements of any State wage, benefit, or tax law, and has failed to pay wages, benefits, taxes, or other contributions or assessments as required by a State wage, benefit, or tax law, the Commissioner shall issue a written determination directing any appropriate agency to permanently revoke any one or more licenses that are held by the employer. Consequently, the Department must respectfully disagree with the commenter's assertion that the Commissioner does not have the statutory authority to impose the sanctions enumerated in the new rules.

5. COMMENT: Mr. Shapiro stated that the real estate profession is "a pretty complex one, where many of the agents are considered independent contractors, as opposed to employees, and there are concerns with this rule that a broker who oversees a company could potentially lose his license for example where there is a flat fee commission, as opposed to a negotiated one; where in that case, potentially, that agent, even though there is an independent contractor agreement in place, could be treated as an employee, rather than an independent contractor, and subject to this rule under that."

RESPONSE: Under the New Jersey Unemployment Compensation Law (UCL), real estate brokers and salespeople who are compensated wholly on a commission basis are exempt from coverage. See [N.J.S.A. 43:21-19\(i\)\(7\)\(K\)](#). The commenter is correct that where such an individual receives remuneration for services and is *not* compensated wholly on a commission basis, he or she will be considered an employee, unless the putative employer is able to establish that the individual and the services that he or she provides meet the statutory test for independent contractor status set forth at [N.J.S.A. 43:21-19\(i\)\(6\)\(A\)](#), (B), and (C), commonly referred to as the "ABC test." In the latter regard--that is, relative to the treatment under the UCL of those who receive payment for services as employees, unless the putative employer is able to establish that the individual and services at issue meet the ABC test -- the employer who is a real estate broker and who chooses to compensate his or her sales staff in a manner other than wholly on a commission basis (thereby forgoing his or her right to assert the specialized exemption for real estate salespeople at [N.J.S.A. 43:21-19\(i\)\(7\)\(K\)](#)) is identically situated to every other employer throughout the State. Where such a real estate broker/employer fails to maintain or report records required under State wage, benefit, or tax laws and fails to pay wages, benefits, or taxes, including when those actions stem from employee misclassification (as appears to be the commenter's primary concern), the Department sees no reason to treat such employers differently than it treats any other. Consequently, the Department does not share the commenter's concerns.

Federal Standards Statement

The adopted new rules do not exceed standards or requirements imposed by Federal law as there are currently no Federal standards or requirements applicable to the subject matter of this rulemaking. As a result, a Federal standards analysis is not required.

Full text of the adopted new rules follows:

CHAPTER 4

SUSPENSION AND REVOCATION OF EMPLOYER LICENSE FOR NON-COMPLIANCE WITH STATE WAGE, BENEFIT, AND TAX LAWS

SUBCHAPTER 1. GENERAL PROVISIONS

12:4-1.1 Purpose and scope

(a) The purpose of this chapter is to implement [N.J.S.A. 34:1A-1.11](#) et seq., which empowers the Commissioner under certain circumstances to issue a written determination directing any appropriate agency to suspend or revoke any one or more licenses that are held by an employer who has failed to maintain and report a record(s) regarding wages, benefits, and taxes that the employer is required to maintain or report under State wage, benefit, and tax laws, and who has in connection with the failure to maintain or report a required record(s), failed to pay wages, benefits, taxes, or other contributions or assessments as required by State wage, benefit, and tax laws.

(b) This chapter applies to each employer covered under any one or all of the State wage, benefit, and tax laws.

(c) For the purpose of this chapter, the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.

(d) For the purpose of this chapter, the individual(s) responsible for management of a Limited Liability Company (L.L.C.) or Limited Liability Partnership (L.L.P.) shall be deemed to be the employer(s) of the employees of the L.L.C. or L.L.P.

SUBCHAPTER 2. DEFINITIONS

12:4-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Agency" means any agency, department, board, or commission of New Jersey, or of any political subdivision of New Jersey, that issues a license for purposes of operating a business in New Jersey.

"Commissioner" means the Commissioner of the Department of Labor and Workforce Development, or his or her designee.

"In connection with" means either related factually or causally, or discovered during the same investigation, a contemporaneous or a near contemporaneous investigation, regardless of whether related factually or causally.

"License" means any agency permit, certificate, approval, registration, charter, or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in New Jersey, and that includes, but is not limited to, the following:

1. A certificate of incorporation pursuant to the New Jersey Business Corporation Act, [N.J.S.A. 14A:1-1](#) et seq.;
2. A certificate of authority pursuant to [N.J.S.A. 14A:13-1](#) et seq.;
3. A statement of qualification or a statement of foreign qualification pursuant to the Uniform Partnership Act (1996), N.J.S.A. 43:1A-1 et seq.;
4. A certificate of limited partnership or a certificate of authority pursuant to the Uniform Limited Partnership Law (1976), [N.J.S.A. 42:2A-1](#) et seq.;

5. A certificate of formation or certified registration pursuant to the New Jersey Limited Liability Company Act, [N.J.S.A. 42:2B-1](#) et seq.;

6. Any license, certificate, permit, or registration pursuant to [N.J.S.A. 48:16-1](#) et seq.; [48:16-13](#) et seq.; the New Jersey Alcohol Beverage Control Act, [33:1-1](#) et seq.; [34:8-70](#); [34:8A-7](#) et seq.; [52:27D-130](#); [56:8-1.1](#) et seq.; or the Public Works Contractor Registration Act, [34:11-56.48](#) et seq.; and

7. Any agency permit, certificate, approval, registration, charter, or similar form of permission to engage in a profession, trade, or occupation in New Jersey.

"State wage, benefit, and tax laws" means:

1. [N.J.S.A. 34:11-4.1](#) et seq.;
2. The New Jersey Prevailing Wage Act, [N.J.S.A. 34:11-56.25](#) et seq.;
3. The New Jersey State Wage and Hour Law, [N.J.S.A. 34:11-56a](#) et seq.;
4. The Workers' Compensation Law, [N.J.S.A. 34:15-1](#) et seq.;
5. The Unemployment Compensation Law, [N.J.S.A. 43:21-1](#) et seq.;
- [page=1466] 6. The Temporary Disability Benefits Law, [N.J.S.A. 43:21-25](#) et seq.;
7. [N.J.S.A. 43:21-39.1](#) et seq.; and
8. The New Jersey Gross Income Tax Act, [N.J.S.A. 54A:1-1](#) et seq.

SUBCHAPTER 3. VIOLATIONS; COMMISSIONER ACTIONS

12:4-3.1 First offense--notification and follow-up audit

(a) When the Commissioner finds that an employer has failed to comply with the reporting or recordkeeping requirements of any State wage, benefit, or tax law, and in connection with that failure to report or maintain records, has failed to pay wages, benefits, taxes, or other contributions or assessments as required by any State wage, benefit, or tax law, the Commissioner shall, as an alternate to, or in addition to, any other action taken in the enforcement of the State wage, benefit, or tax law, take the following two actions:

1. Notify the employer of the finding that he or she has failed to comply with a State wage, benefit, or tax law's reporting or recordkeeping requirement(s) and, in connection with that failure to report or maintain a record(s), has failed to pay wages, benefits, taxes, or other contributions or assessments as required by a State, benefit, or tax law; and
2. Ensure that an audit of the employer or any successor firm of the employer is conducted not more than 12 months after the employer has been placed on notice of the Commissioner's finding under (a)1 above.

(b) Notification to the employer under (a)1 above may occur within the body of the same document through which the employer is notified of the underlying violation(s) of a State wage, benefit, or tax law or through which the employer is notified of any assessment for unpaid wages, benefits, taxes, other contributions or assessments, or for penalties, fees, or interest under a State wage, benefit, or tax law.

(c) For the purpose of this chapter, an employer will be considered to have failed to comply with the reporting or recordkeeping requirements of any State wage, benefit, or tax law when:

1. The employer fails to maintain or report a record required under any State wage, benefit, or tax law; or

51 N.J.R. 1463(a)

2. A record maintained or reported by the employer under any State wage, benefit, or tax law contains a material misrepresentation.

12:4-3.2 Second offense--suspension of license(s)

(a) Where at the conclusion of an audit conducted under [N.J.A.C. 12:4-3.1\(a\)2](#), the Commissioner finds that the employer or any successor firm to the employer has failed to comply with the reporting or recordkeeping requirements of any State wage, benefit, or tax law, and has failed to pay wages, benefits, taxes, or other contributions or assessments as required by any State wage, benefit, or tax law, the Commissioner:

1. May, after providing the employer or successor firm with a "Notice of Intent to Direct the Suspension of a License" under (c) below, and after affording the employer or successor firm with an opportunity for a hearing in accordance with the Administrative Procedure Act, [N.J.S.A. 52:14B-1](#) et seq., and [52:14F-1](#) et seq., issue a written determination directing any appropriate agency to suspend any one or more licenses that are held by the employer or successor firm, for a period of time determined by the Commissioner; and

2. Shall ensure that an audit of the employer or any successor firm of the employer is conducted not more than 12 months after the date of the Commissioner's written determination under (a)1 above.

(b) In determining the appropriate length of suspension, the Commissioner shall consider the following factors:

1. The number of employees for which the employer or successor firm failed to maintain or report required records and pay required wages, benefits, taxes, or other contributions or assessments;

2. The total amount of wages, benefits, taxes, or other contributions or assessments not paid by the employer or successor firm;

3. Any other harm resulting from the violation(s);

4. Whether the employer or successor firm made good faith efforts to comply with any applicable requirements;

5. The duration of the violation(s);

6. The role of the directors, officers, or principals of the employer or successor firm in the violation(s);

7. Any prior misconduct by the employer or successor firm; and

8. Any other factors the Commissioner considers relevant.

(c) When the Commissioner seeks to direct the suspension of an employer's license, the employer shall be furnished with a written notice indicating:

1. The Commissioner's intent to direct the suspension of a license(s) held by the employer;

2. The license(s) sought to be suspended;

3. The duration of the license suspension(s) sought;

4. The violations of State wage, benefit, or tax law upon which the Commissioner relies in support of his or her intent to direct the license suspension(s); and

5. That the employer shall have the right to appeal the license suspension(s) to the Commissioner within 15 days of receipt of the Notice of Intent to Direct the Suspension of a License.

(d) The Notice of Intent to Direct the Suspension of a License shall be mailed, by regular mail and return receipt requested, to a corporate officer of record, partner, individual proprietor, or other responsible person.

51 N.J.R. 1463(a)

(e) If, after confirmation that the employer has been mailed the Notice of Intent to Direct the Suspension of a License, the employer has either failed to file a timely appeal or has expressly waived its right to appeal, the Commissioner shall issue a written determination directing any appropriate agency to suspend any one or more licenses that are held by the employer or successor firm.

(f) All hearings conducted pursuant to this section shall be conducted in accordance with the Administrative Procedure Act, [N.J.S.A. 52:14B-1](#) et seq., and [52:14F-1](#) et seq., and the Uniform Administrative Procedure Rules, [N.J.A.C. 1:1](#).

(g) Upon receipt of a written determination of the Commissioner directing an agency to suspend a license(s) pursuant to this section, and notwithstanding any other law or rule, the agency shall immediately suspend the license(s) of the employer in the manner directed by the Commissioner.

12:4-3.3 Third offense--revocation of license(s)

(a) Where, at the conclusion of an audit conducted pursuant to [N.J.A.C. 12:4-3.2\(a\)2](#), the Commissioner finds that the employer or any successor firm to the employer has failed to comply with the reporting or recordkeeping requirements of any State wage, benefit, or tax law, and has failed to pay wages, benefits, taxes, or other contributions or assessments as required by any State wage, benefit, or tax law, the Commissioner shall after providing the employer or successor firm with a "Notice of Intent to Direct the Revocation of a License" under (b) below, and after affording the employer or successor firm with an opportunity for a hearing in accordance with the Administrative Procedure Act, [N.J.S.A. 52:14B-1](#) et seq., and [52:14F-1](#) et seq., issue a written determination directing any appropriate agency to permanently revoke any one or more licenses that are held by the employer or successor firm.

(b) When the Commissioner seeks to direct the permanent revocation of an employer's license, the employer shall be furnished with a written notice indicating:

1. The Commissioner's intent to direct the permanent revocation of a license(s) held by the employer;
2. The license(s) sought to be permanently revoked;
3. The violations of State wage, benefit, or tax law upon which the Commissioner relies in support of his or her intent to direct the license revocation(s); and
4. That the employer shall have the right to appeal the license revocation(s) to the Commissioner within 15 days of receipt of the Notice of Intent to Direct the Revocation of a License.

(c) The Notice of Intent to Direct the Revocation of a License shall be mailed, by regular mail and return receipt requested, to a corporate officer of record, partner, individual proprietor, or other responsible person.

(d) If, after confirmation that the employer has been mailed the Notice of Intent to Direct the Revocation of a License, the employer has either failed to file a timely appeal or has expressly waived its right to appeal, the Commissioner shall issue a written determination directing any appropriate agency to permanently revoke any one or more licenses that are held by the employer or successor firm.

(e) All hearings conducted pursuant to this section shall be conducted in accordance with the Administrative Procedure Act, [N.J.S.A. 52:14B-1](#) [page=1467] et seq., and [52:14F-1](#) et seq., and the Uniform Administrative Procedure Rules, [N.J.A.C. 1:1](#).

(f) Upon receipt of a written determination of the Commissioner directing an agency to permanently revoke a license(s) pursuant to this section, and notwithstanding any other law or rule, the agency shall immediately suspend the license(s) of the employer as directed by the Commissioner.

12:4-3.4 Employee leasing companies

51 N.J.R. 1463(a)

(a) The Commissioner may take action under [N.J.A.C. 12:4-3.1](#), [3.2](#), or [3.3](#), against an employee leasing company as the co-employer of the employees of its client company, including, but not limited to, the issuance of a written determination directing that the employee leasing company's registration be either suspended or permanently revoked, provided that the Commissioner has not determined that the failure or continued failure to keep records regarding, and to pay wages, benefits, and taxes under State wage, benefit, and tax laws, was caused by incomplete, inaccurate, misleading, or false information provided to the employee leasing company by the client company.

(b) In each instance where the Commissioner takes action under (a) above against an employee leasing company as the co-employer of the employees of its client company, the Commissioner may also take action under [N.J.A.C. 12:4-3.1](#), [3.2](#), or [3.3](#), against the client company.

12:4-3.5 Presumption of successor firm

(a) A rebuttable presumption that an employer has established a successor firm shall arise if the two parties share two or more of the following capacities or characteristics:

1. Performing similar work within the same geographical area;
2. Occupying the same premises;
3. Having the same telephone or fax number;
4. Having the same email address or Internet website;
5. Employing substantially the same workforce, administrative employees, or both;
6. Utilizing the same tools, equipment, or facilities;
7. Employing or engaging the services of any person or persons involved in the direction or control of the other; or
8. Listing substantially the same work experience.