

§1495-H. Enforcement actions

A payroll processor that fails to obtain a license under section 1495-D or that violates any provision of this chapter or any rule issued by the administrator, or through any unfair, unconscionable or deceptive practice causes or has the potential to cause damage to an employer or employee of that employer, is subject to one or more of the actions specified in this section: [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

1. Cease and desist order. A cease and desist order.

A. The administrator may issue and serve an order upon a payroll processor requiring that processor to cease and desist from the violation or practice if in the opinion of the administrator that payroll processor subject to the provisions of this chapter is engaging in or has engaged in or if the administrator has reasonable cause to believe that the processor is about to engage in any of the following violations or practices:

- (1) Violation of a law, rule or regulation relating to the supervision of the payroll processor;
- (2) Violation of any written agreement entered into with the administrator; or
- (3) An anticompetitive or deceptive practice or one that is otherwise injurious to the public interest. [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

B. Except as provided in paragraph C, prior to the issuance of any order to cease and desist in accordance with this subsection, the administrator shall provide notice to the payroll processor. This notice must contain a statement of the facts upon which the order is to be issued and the date upon which the order is to take effect. Upon petition of any interested party, a hearing in conformity with Title 5, chapter 375 must be provided prior to the effective date of any order issued pursuant to this subsection, except as provided in paragraph C. [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

C. Whenever, in the opinion of the administrator, a violation or practice requires immediate action for the protection of the public or when the violation or practice or the continuation thereof is likely to cause insolvency or substantial dissipation of the assets or earnings of the payroll processor, the administrator may issue an order pursuant to this subsection which becomes effective upon service of that order, without prior notice or hearing. If an order subsequently is issued by the administrator pursuant to paragraph A, the administrator shall afford an opportunity for a hearing to rescind the order and action taken promptly thereafter, upon application by an interested party; [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

2. Bond or security forfeiture. After notice and hearing, forfeiture of that portion of the required bond or other security instrument as proportionately may make aggrieved parties whole; [PL 2005, c. 278, §5 (AMD).]

3. Civil action by administrator. A civil action seeking civil penalties, remedial action and injunctive relief by the administrator through the Attorney General, after which a court may assess a civil penalty of not less than \$1,500 nor more than \$7,500 per violation or order remedial or injunctive relief. When the violation consists of failure to maintain the surety bond required by section 1495-E, each day in which coverage is not provided constitutes a separate violation; [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

4. Private civil action. A civil action by an aggrieved employer in which that employer has the right to recover actual damages from the payroll processor in an amount determined by the court, plus costs of the action together with reasonable attorney's fees; [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

5. Regulatory oversight. Increased regulatory oversight by the administrator, including requiring reports or other information to be submitted at those times and in such forms as the administrator considers appropriate for the proper supervision and regulation of the payroll processor; and [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

6. Action on license. After notice and the opportunity for hearing before the administrator, revocation, suspension or nonrenewal of the payroll processor's license.

A respondent aggrieved by an order of the administrator may obtain judicial review of the order in the Superior Court. The proceeding for review is initiated and conducted in accordance with Title 5, chapter 375, subchapter 7.

[PL 2021, c. 245, Pt. A, §7 (RPR).]

SECTION HISTORY

PL 2003, c. 668, §6 (NEW). PL 2003, c. 668, §12 (AFF). PL 2005, c. 278, §5 (AMD). PL 2021, c. 245, Pt. A, §7 (AMD).

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