

LEXSTAT 40 NJR 6738(A)

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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
WAGE AND HOUR COMPLIANCE**

40 N.J.R. 6738(a)

Proposed Amendment: N.J.A.C. 12:55-2.1

Click here to view Interested Persons Statement

Wage Payments

Payroll Deductions; General

Authorized By: David J. Socolow, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(e), 34:11-4.4 and 34:11-4.11.*

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2008-399.

A **public hearing** on the proposed amendment will be held on the following date at the following location:

Thursday, December 18, 2008
10:00 A.M. to 12:00 Noon
N.J. Department of Labor and Workforce Development
John Fitch Plaza
1st Floor Conference Room
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609)292-2789 if you wish to be included on the list of speakers.

Submit written comments by January 30, 2009 to:
David Fish, Regulatory Officer
Office of Legal and Regulatory Services
N.J. Department of Labor and Workforce Development
P.O. Box 110--13th Floor
Trenton, New Jersey 08625-0110
Fax to: (609) 292-8246

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The agency proposal follows:

Summary

The Department is proposing to amend *N.J.A.C. 12:55-2.1*, so as to permit employers to withhold or divert a portion of an employee's wages where the amount withheld or diverted is for health club membership fees or for child care services and where the withholding or diversion is authorized either in writing by the employee, or under a collective bargaining agreement. *N.J.S.A. 34:11-4.4*, the law, which governs the withholding or diversion of wages, lists circumstances under which an employer may withhold or divert wages. The final item on that list indicates that an employer may withhold or divert a portion of an employee's wages under such circumstances as the Commissioner of Labor and Workforce Development may authorize by regulation as proper and in conformity with the intent and purpose of the wage payment law, if such deductions are approved by the employer.

It is the understanding of the Department that employers on occasion make arrangements with health clubs or with providers of child care services to provide those services to employees, often at a discounted group rate. Such an arrangement benefits both employees and employers in that employees have the option of availing themselves of the services, often at a discounted rate and employers have a happier, healthier, more productive workforce. Not surprisingly, the service providers are more willing to charge a discounted group rate where an arrangement can be made for the employer to pay the membership fees in a lump sum on behalf of the employees. In such instances, employers would like the freedom to withhold from the wages of participating employees the cost of those fees, where the affected employees consent in writing to the withholding of the fees from their wages or where the withholding arrangement is set forth in a collective bargaining agreement. It is to facilitate these sorts of arrangements, which benefit both employees and employers, that the Department is proposing to add this narrow exception to the general prohibition against the withholding or diversion of any portion of an employee's wages.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The proposed amendment would have a positive social impact in that it would provide employees with options and greater access to health club membership and child care services. Moreover, in situations where the employer is able to obtain a discounted rate for the program or service, an increased percentage of employees will be able to participate in the program or service. Wellness programs, such as those covered by this amendment foster a positive work environment, which would likely lead to an increase in the productivity of employees.

Economic Impact

The proposed amendment would have a positive economic impact in that the improvement in employees' health and wellness, which would likely result from the proposed amendment may help employees and employers alike avoid high medical and/or workers' compensation insurance costs. Furthermore, as mentioned above, employees would find participation in employer-obtained health club membership and child care services economically beneficial in situations where the employer is able to contract for a discounted group rate.

[page=6739] Federal Standards Statement

The proposed amendment is governed by *N.J.S.A. 34:11-4.1* et seq. and is not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed amendment would have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendment would have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendment would impose no reporting or recordkeeping requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. As to compliance requirements, the proposed amendment would require employers to obtain written consent from an employee prior to withholding from the employee's wages health club membership fees or the cost of child care services, or in the alternative, the withholding would have to be permitted under an applicable collective bargaining agreement.

Smart Growth Impact

The proposed amendment would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendment would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed amendment pertains to withholding or diverting an employee's wages and has nothing whatsoever to do with housing.

Smart Growth Development Impact

The proposed amendment would not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendment pertains to withholding or diverting an employee's wages and has nothing whatsoever to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions in brackets [thus]):

12:55-2.1 Payroll deductions; general

(a) No employer may withhold or divert any portion of an employee's wages unless:

1. (No change.)

2. The amounts withheld or diverted are for:

i.-vii. (No change.)

viii. Payments authorized either in writing by employees, or under a collective bargaining agreement, for health club membership fees or for child care services, provided such deductions are approved by the employer.

[viii.] **ix.** (No change in text.)