

LEXSTAT 40 N.J.R. 5527(A)

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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF EMPLOYER ACCOUNTS**

40 N.J.R. 5527(a)

Proposed Amendments: *N.J.A.C. 12:16-5.3 and 13.7*

Proposed New Rule: *N.J.A.C. 12:16-13.11*

[Click here to view Interested Persons Statement](#)

Contributions, Records and Reports

Wage Reporting, Contribution Reporting and Payment of Contributions

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

Authority: *N.J.S.A. 43:21-1* et seq., specifically, *N.J.S.A. 43:21-7g*.

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

Proposal Number: PRN 2008-329.

A **public hearing** on the proposed amendments and new rule will be held on the following date at the following location:

Monday, November 10, 2008
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
13th Floor Auditorium
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 December 5, 2008 to:
David Fish, Regulatory Officer
Office of Legal and Regulatory Services
Department of Labor and Workforce Development
P.O. Box 110, 13th Floor
Trenton, New Jersey 08625-0110
Fax: (609) 292-8246

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The agency proposal follows:

Summary

The Department is proposing an amendment to *N.J.A.C. 12:16-13.7*, which, beginning in 2009, would apply the electronic filing requirement for wage reports to all employers and all third-party payroll processors, regardless of the number of employees reported. This is the final step in the Department's ongoing phase-in of employers and third-party payroll processors for the purpose of requiring electronic filing of wage reports. Specifically, *N.J.A.C. 12:16-13.7* has progressively decreased over a period of years the employee threshold for imposition of the electronic wage report filing requirement: 1995/1996 - employers in excess of 250 employees and third-party payroll processors reporting wages for in excess of 100 employees must file electronically; 2001 - employers within excess of 50 employees and third-party payroll processors reporting wages for in excess of 50 employees must file electronically; 2006 - employers with in excess of 10 employees and third-party payroll processors reporting wages for in excess of 10 employees must file electronically; 2008 - employers with in excess of four employees and third-party payroll processors reporting wages for in excess of four employees must file electronically. The Department is proposing that beginning in 2009, all employers and all third-party payroll processors, regardless of the number of employees reported, be required to file electronically, thereby eliminating the paper filing of wage reports altogether.

The Department is also proposing that the existing provision at *N.J.A.C. 12:16-13.7(e)7*, which allows an employer to apply for a waiver of the electronic filing requirement upon a showing of good cause, be replaced by proposed *N.J.A.C. 12:16-13.7(e)8, 9 and 10*, which would also provide a good cause exception to the electronic filing requirement, but which would expressly define the term "good cause," for this purpose, to mean that the employer or third-party payroll processor has provided to the Commissioner or his or her designee a signed, sworn, affidavit, in the form prescribed by *New Jersey Court Rule 1:4-4*, which affidavit shall state that the employer or third-party payroll processor has no access to a computer, through any means, for the purpose of filing his or her wage report electronically.

In addition, the Department is proposing a new rule at *N.J.A.C. 12:16-13.11*. This new rule would pertain to contribution reporting, as opposed to wage reporting. Contribution reports are submitted by employers on Form NJ-927. In 2007, the Department eliminated a number of references within *N.J.A.C. 12:16-13.7* (wage reporting) to Form NJ-927. At that time, the Department explained that where, for the purpose of imposing electronic filing requirements in wage reporting, then existing *N.J.A.C. 12:16-13.7* linked the submission of wage reports (Form WR-30) to the filing of contribution reports (Form NJ-927) and the payment of contribution liability, all references to the filing of contribution reports and the payment of contribution liability were being deleted, because the Department had determined that there was no need within the context of the particular requirement at *N.J.A.C. 12:16-13.7* (electronic filing of wage reports) to interject the concepts of contribution report filing or payment of contribution liability. That statement continues to be true. Therefore, the Department is proposing a new section (*N.J.A.C. 12:16-13.11*), which would address the filing of contribution reports (Form NJ-927), separate and apart from the requirement that employers submit wage reports (Form WR-30). For the same reasons as expressed above relative to Form WR-30, the Department is proposing that included within new *N.J.A.C. 12:16-13.11* be an electronic filing requirement for all employers and all third-party payroll processors. Currently, electronic filing of Form NJ-927 is optional.

Simultaneous phase-in of the electronic filing requirement for both Form WR-30 and Form NJ-927 would, beginning in 2009, obviate the need for the State to send through the mail to employers quarterly packages of paper wage and contribution reporting forms. The anticipated savings to the State, which would result from the elimination of this paper form process would be significant.

Finally, the Department is proposing to amend *N.J.A.C. 12:16-5.3*, which pertains to the payment of contributions, so as to require the payment of contributions by electronic means for all employers. Existing *N.J.A.C. 12:16-5.3(c)* indicates that payment of contributions, except for payment by electronic means, shall be submitted with contribution reports. Since the proposed amendments to *N.J.A.C. 12:16-13.7* and the proposed new rule at *N.J.A.C. 12:16-13.11* would eliminate the submission of paper contribution and wage reports, *N.J.A.C. 12:16-5.3(e)*, which speaks of submission of payment through other than electronic means with contribution reports would no longer be applicable. Consequently, the Department is proposing to indicate through the proposed amendments to *N.J.A.C. 12:16-5.3* that the payment of contributions shall be done in every instance through electronic means and that such electronic payment of contributions must comply with *N.J.S.A. 54:48-4.1 et seq.*, which is within the State Uniform Tax Act (*N.J.S.A. 54:48-*

I et seq.) and pertains to the payment of contributions by electronic means. The combined effect of the proposed amendments and new rules contained within this notice would be to fully computerize both the reporting by employers of wage and contribution reports and the payment by employers of contributions. The Department is also proposing the inclusion within *N.J.A.C. 12:16-5.3* of a good cause exception to the electronic payment requirement. This good cause exception provision would be identical to the good cause exception provision proposed for inclusion within both *N.J.A.C. 12:16-13.7* and new 13.11, discussed in detail above.

The Department has consulted both the Division of Revenue and the Division of Taxation, within the Department of the Treasury, with regard to the proposed amendments and new rule.

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 amendments and new rule would have a positive social impact in that electronic filing is the most accurate method of wage and contribution reporting, ensuring the fewest mistakes in the transfer of pertinent information from employers and third-party payroll processors to the State. Along with improved accuracy in the reporting of wage and contribution information comes improved accuracy in both the payment of unemployment benefits to workers and the charging of employers' experience rating accounts. When employer accounts are charged correctly and benefits are paid correctly, workers, employers and taxpayers benefit. The proposed amendments pertaining to payment (as opposed to reporting) of contributions would also have a positive social impact in that they would eliminate possible confusion as to acceptable methods of contribution payment. Those payments are remitted to the Division of Revenue and are governed by the State Uniform Tax Procedure Law. With the elimination of paper reporting by employers, the payment of contributions through any means other than electronic means would be administratively infeasible.

Economic Impact

An employer or third-party payroll processor, who does not already possess a computer with access to the Internet could be negatively impacted by the proposed amendments and new rule in that in order to file wage reports and contribution reports and to make contribution payments under the proposed amendments and new rule, the employer or third-party payroll processor would be required, beginning in 2009, to either (1) purchase a computer and pay a service provider for internet access or (2) obtain internet access through some other means (for example, use of a computer at a local library or at a Business Resource Center housed within a Department of Labor and Workforce Development One-Stop Career Center).

All employers, third-party payroll processors and workers, including the employers and third-party payroll processors mentioned above, would benefit economically from the proposed amendments and new rule in terms of the aforementioned improvement in accuracy for purposes of calculating benefits and contribution amounts. As indicated above, along with improved accuracy in the reporting of wage information and contribution information comes improved accuracy in both the payment of unemployment benefits to workers and the charging of employers' experience rating accounts. Moreover, both the State and the taxpayers would benefit economically from the proposed amendments and new rule in that they would result in the elimination of paper reporting and payment, which would, in turn, significantly decrease the workload associated with processing reports and payments.

Federal Standards Statement

The proposed amendments and new rule do not exceed standards or requirements imposed by Federal law or regulation. Specifically, the proposed amendments and new rule are consistent with the Federal Unemployment Tax Act, 26 *U.S.C. §§3301 et seq.*, and the regulations promulgated in accordance therewith, 20 CFR 601 *et seq.* Consequently, no Federal standards analysis is required.

Jobs Impact

The proposed amendments and new rule would have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments and new rule would have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments and new rule would require that a certain segment of the employer and third-party payroll processor population, which had been previously unaffected by the electronic filing requirement, must file wage reports (Form WR-30) and contribution reports (Form NJ-927) electronically (as opposed to paper filing) for all calendar quarters subsequent to the quarter ending December 31, 2008. All employers would also be required to make contribution payments electronically. The amendments and new rule would contain reporting, recordkeeping and compliance requirements as discussed in the Summary above and would affect small businesses as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. The Department believes that this final step in the phase-in of electronic filing of wage reports and contribution reports and electronic payment of contributions will ultimately benefit all participants in the unemployment insurance system, including employers and third-party payroll processors affected by the proposed amendments and new rule. The possible costs associated with the proposed amendments and new rule are addressed within the Economic Impact above. The Department does not anticipate that professional services will be required in order to comply with the proposed amendments and new rule.

Smart Growth Impact

The proposed amendments and new rule 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 amendments and new rule would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed amendments and new rule pertain to the payment of contributions and the reporting of wages and contributions by employers. The proposed amendments and new rule have nothing to do with housing.

Smart Growth Development Impact

The proposed amendments and new rule 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 proposed amendments and new rule pertain to the payment of contributions and the reporting of wages and contributions by employers. Therefore, the proposed amendments and new rule have 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 indicated in brackets [thus]):

SUBCHAPTER 5. CONTRIBUTIONS BY EMPLOYERS

12:16-5.3 Payment of contributions

(a)-(b) (No change.)

[(c) Payment of contributions, except for payment by electronic means, shall be submitted with contribution reports.]

[(d)] (c) Payment of contributions **shall be** by electronic means, **which** includes, but is not limited to, electronic funds transfer (EFT) or Internet methods, and shall comply with the provisions regarding payment by electronic means contained in *N.J.S.A. 54:48-4.1* et seq., which provisions are incorporated herein by reference.

(d) For a given reporting period, an employer or third-party payroll processor may apply to the Commissioner or his or her designee for a waiver of the electronic payment requirement in (c) above, thereby permitting the employer or third-party payroll processor to make a payment of contributions for that reporting period by other than electronic means.

(e) Where an employer or third-party payroll processor has made application to the Commissioner under (d) above, the Commissioner may, upon a showing of good cause, as that term is defined under (f) below, waive the electronic payment requirement, thereby permitting the employer or third-party payroll processor to make a payment of contributions for that reporting period by other than electronic means.

(f) For use in this section, the term "good cause" shall mean that the employer or third-party payroll processor has provided to the Commissioner or his or her designee a signed, sworn, affidavit, in the form prescribed by *New Jersey Court Rule 1:4-4*, which affidavit shall state that the employer or third-party payroll processor has no access to a computer, through any means, for the purpose of making electronic payment of his or her contributions for that reporting period to the Unemployment Compensation Fund or the State Disability Benefits Fund.

(g) Nothing in this section shall be construed to exempt an accelerated payor from its obligation either under *N.J.A.C. 18:35-7.3(b)* to remit monthly payment of withheld taxes or under *N.J.A.C. 18:35-7.3(c)* to remit weekly payment of withheld taxes, and nothing in this section shall be construed to exempt an accelerated payor from its obligation to remit such payments in the manner prescribed in either *N.J.A.C. 18:35-7.3(b)* (for monthly payments) or 7.3(c) (for weekly payments).

SUBCHAPTER 13. REPORTS

12:16-13.7 Wage reporting

(a)-(d) (No change.)

(e) The following pertains to electronic reporting:

1.-6. (No change.)

[7. Employers or third-party payroll processors may have the requirements in (e)1 through 6 above waived or extended for good cause as defined in *N.J.A.C. 12:19-1.2* upon written application for a waiver or extension to the Commissioner or his or her designee.]

7. For all calendar quarters subsequent to the quarter ending December 31, 2008, all employers and all third-party processors shall file Form WR-30, "Employer Report of Wages Paid," and any amendments to the "Employer Report of Wages Paid," via electronic transmission in a form and manner prescribed by the Division of Revenue, within the Department of the Treasury, regardless of the number of employees reported.

8. For a given reporting period, an employer or third-party payroll processor may apply to the Commissioner or his or her designee for a waiver of the electronic filing requirement in (e)7 above, thereby permitting the employer or third-party payroll processor to file his or her wage report for that reporting period by other than electronic means.

9. Where an employer or third-party payroll processor has made application to the Commissioner under (e)8 above, the Commissioner may, upon a showing of good cause, as that term is defined under (e)10 below, waive the electronic filing requirement, thereby permitting the employer or third-party payroll processor to file his or her wage report for that reporting period by other than electronic means.

10. For use in this section, the term "good cause" shall mean that the employer or third-party payroll processor has provided to the Commissioner or his or her designee a signed, sworn, affidavit, in the form prescribed by *New Jersey Court Rule 1:4-4*, which affidavit shall state that the employer or third-party payroll processor has no access to a computer, through any means, for the purpose of filing his or her wage report for that reporting period electronically.

Recodify existing 8. and 9. as **11. and 12.** (No change in text.)

12:16-13.11 Contribution reporting

(a) Each employer other than employers of domestic service workers shall file a report, as required by the Controller, with the Division of Revenue, within the Department of the Treasury, within 30 days after the end of each quarter in a form and manner prescribed by the Division of Revenue, within the Department of the Treasury, listing the total of all wages paid, the wages paid in excess of the taxable maximum, the taxable wages on which contributions are due, the number of workers employed during the pay period and the number of workers insured under a "private plan" for temporary disability insurance, If wages or base weeks are zero, then the employer must enter "-0-" in the appropriate columns.

(b) For all quarters subsequent to the quarter ending December 31, 2008, the report required to be filed in (a) above shall also include the number of workers insured under a "private plan" for family leave insurance pursuant to P.L. 2008, c. 17.

(c) For the purposes of this section, a "domestic service worker" is an employee in a private home of the employer, such as a babysitter, nanny, health aide, private nurse, maid, caretaker, yard worker or similar domestic employee.

(d) Each employer of domestic service workers shall file an annual report, as required by the Controller, with the Division of Revenue, within the Department of the Treasury, listing the total of all wages paid, the wages paid in excess of the taxable maximum, the taxable wages on which contributions are due and the average number of workers employed for each quarter. If the wages are zero, then the employer must enter "-0-" in the appropriate columns. For the calendar year ending December 31, the report would be due January 31 following the close of the calendar year.

(e) The following pertains to electronic reporting:

1. For all quarters subsequent to the quarter ending December 31, 2008, all third-party payroll processors and employers other than employers of domestic service workers shall file Form NJ-927, "Employer's Quarterly Report" and any amendments to the "Employer's Quarterly Report," via electronic transmission in a form and manner prescribed by the Division of Revenue, within the Department of the Treasury.

2. For all calendar years subsequent to the calendar year ending December 31, 2008, all employers of domestic service workers shall file form NJ-927H, "Domestic Employer's Annual Report," and any amendments to the "Domestic Employer's Annual Report," via electronic transmission in a form and manner prescribed by the Division of Revenue, within the Department of the Treasury.

3. For a given reporting period, an employer or third-party payroll processor may apply to the Commissioner or his or her designee for a waiver of the electronic filing requirement in (e)1 or 2 above, thereby permitting the employer or third-party payroll processor to file his or her contribution report for that reporting period by other than electronic means.

4. Where an employer or third-party payroll processor has made application to the Commissioner under (e)3 above, the Commissioner may, upon a showing of good cause, as that term is defined under (e)5 below, waive the electronic filing requirement, thereby permitting the employer or third-party payroll processor to file his or her contribution report for that reporting period by other than electronic means.

5. For use in this section, the term "good cause" shall mean that the employer or third-party payroll processor has provided to the Commissioner or his or her designee a signed, sworn, affidavit, in the form prescribed by *New Jersey Court Rule 1:4-4*, which affidavit shall state that the employer or third-party payroll processor has no access to a computer, through any means, for the purpose of filing his or her contribution report for that reporting period electronically.

(f) Nothing in this section shall be construed to exempt an accelerated payor from its obligation either under *N.J.A.C. 18:35-7.3(b)* to remit monthly payment of withheld taxes or under *N.J.A.C. 18:35-7.3(c)* to remit weekly payment of withheld taxes, and nothing in this section shall be construed to exempt an accelerated payor from its

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obligation to remit such payments in the manner prescribed in either *N.J.A.C. 18:35-7.3(b)* (for monthly payments) or 7.3(c) (for weekly payments).