



LEXSTAT 43 NJR 553(A)

NEW JERSEY REGISTER

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VOLUME 43, ISSUE 05

ISSUE DATE: MARCH 7, 2011

RULE PROPOSALS

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

43 N.J.R. 553(a)

Proposed Readoption: *N.J.A.C. 12:56*

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

Wage and Hour Rules

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20; 34:1A-3(e); 34:2-21.64; and 34:11-56a* et seq., specifically 34:11-56a5 and 34:11-56a19.

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

Proposal Number: PRN 2011-059.

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

Tuesday, March 29, 2011
10:00 A.M. to 12:00 Noon
NJ Department of Labor and Workforce Development
John Fitch Plaza
2nd Floor, Large 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 May 6, 2011 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services
NJ Department of Labor and Workforce Development
P.O. Box 110 - 13th Floor
Trenton, New Jersey 08625-0110

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, *N.J.A.C. 12:56*, Wage and Hour, is scheduled to expire on July 25, 2011. The New Jersey State Wage and Hour Law, *N.J.S.A. 34:11-56a* et seq., was enacted to ensure fair competition between employers and to safeguard the health, efficiency and general well-being of New Jersey workers. The rules, which implement this law are promulgated at *N.J.A.C. 12:56*. The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. Accordingly, the Department proposes that *N.J.A.C. 12:56* be readopted.

The Department is also currently in the process of undertaking a thorough review of the chapter for purposes of assessing whether amendments are needed in order to reflect changes in law or policy. That review includes a particularly close examination of the provisions within Subchapter 7 pertaining to exemptions from overtime with an eye toward updating those provisions in order to ensure consistency between the Federal overtime exemption regulations and the analogous State rules. The Department intends to complete its review of the overtime exemption provisions of Subchapter 7 within the next several months and, where the Department determines that amendments are necessary, a notice of proposal containing those amendments will appear in a later issue of the New Jersey Register.

A summary of the subchapters proposed for re adoption follows:

N.J.A.C. 12:56-1 sets forth the general provisions, purpose and scope, violations, administrative penalties and fees, interest, hearings and discharge or discrimination against an employee making a complaint.

N.J.A.C. 12:56-2 defines the words and terms used throughout the chapter.

N.J.A.C. 12:56-3 sets forth the minimum wage rates, as well as exemptions therefrom.

[page=554] N.J.A.C. 12:56-4 concerns records that must be kept by employers pertaining to timekeeping, working schedules, gratuities, food, lodging and additions to wages.

N.J.A.C. 12:56-5 addresses payment for hours worked, and sets forth information concerning how the workweek is construed, accounting for irregular hours and on-call time computation.

N.J.A.C. 12:56-6 sets forth overtime requirements, interprets "regular hourly wage" and states how overtime is paid.

N.J.A.C. 12:56-7 lists classes of employees exempted from overtime.

N.J.A.C. 12:56-8 concerns gratuities, food and lodging and offers methods for determining the fair value of these benefits.

N.J.A.C. 12:56-9 addresses the employment of individuals with disabilities and the method of obtaining a permit for hiring individuals with disabilities at wages less than minimum wage rates.

N.J.A.C. 12:56-10 is reserved.

N.J.A.C. 12:56-11 concerns employment in the first processing of farm products occupations and sets forth the minimum wage and overtime rates to be paid to employees.

N.J.A.C. 12:56-12 addresses employment in seasonal amusement occupations.

N.J.A.C. 12:56-13 relates to employment in hotel and motel occupations.

N.J.A.C. 12:56-14 concerns employment in food service occupations.

N.J.A.C. 12:56-15 applies to employment in the air carrier industry.

N.J.A.C. 12:56-16 sets forth the criteria to be used when determining independent contractor status.

N.J.A.C. 12:56-17 addresses the purchasing and upkeep of uniforms.

N.J.A.C. 12:56-18 delineates the requirements of the school-to-work program.

N.J.A.C. 12:56-19 defines "trucking industry employer" and sets forth the minimum wage and overtime rates to be paid those engaged in the trucking industry.

N.J.A.C. 12:56-20 defines "skilled mechanic" and addresses the minimum wage and overtime rates to be paid to those so employed.

N.J.A.C. 12:56 Appendix A indicates the means by which one may obtain the standards referred to throughout this chapter.

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

Social Impact

The rules proposed for re adoption will ensure that all workers receive the minimum pay and benefits to which they are entitled, consistent with law, thereby enabling them to maintain an adequate standard of living.

Economic Impact

The rules proposed for re adoption will only impact negatively upon employers who are currently failing to comply with minimum wage and overtime laws. The requirements contained in the rules, such as minimum wage levels, recordkeeping, overtime payments and the like, are mandated by statute, and New Jersey employers are already required to comply with these requirements. The rules benefit employees by ensuring that they are paid in accordance with minimum standards established by statute. The Department does not expect to be fiscally impacted as a result of the re adoption of *N.J.A.C. 12:56*.

Federal Standards Statement

The rules proposed for re adoption do not contain any standards or requirements that exceed those imposed by Federal law. See *29 U.S.C. §§201* et seq. As a result, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for re adoption will have no impact on jobs. The Department does not anticipate an increase or decrease in jobs as a result of these rules.

Agriculture Industry Impact

The rules proposed for re adoption will continue to ensure that all workers, including those in the agriculture industry, receive the minimum pay and benefits to which they are entitled consistent with law, thereby enabling them to maintain an adequate standard of living.

Regulatory Flexibility Analysis

The rules proposed for re adoption impose certain reporting, recordkeeping and compliance requirements on businesses, some of which are small businesses as defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. Employers are required to keep records concerning hours worked, food and lodgings where provided, wage rates paid and personnel records for each employee. In addition, all employers, regardless of size, are required to pay no less than minimum wage rates to their employees.

The rules proposed for re adoption do not require any employers to hire any outside professional services, although some of the larger employers may prefer to contract payroll services. Additionally, the rules do not impose any new requirements on employers that are not already in existence or required by statute. The Department has provided no lesser or differing compliance or reporting requirements based on the size of the business, because the New Jersey Wage and Hour Law, *N.J.S.A. 34:11-56a* et seq., neither recognizes nor permits any distinction among businesses based upon size for purposes of compliance and reporting.

Smart Growth Impact

The rules proposed for readoption will not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption will not evoke a change in the average costs associated with housing. The basis for this finding is that the rules proposed for readoption effectuate the State's Wage and Hour Law and have nothing to do with housing.

Smart Growth Development Impact

The rules proposed for readoption will 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 rules proposed for readoption effectuate the State's Wage and Hour Law, and have nothing 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 rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 12:56*.