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State of New Jersey
Department of Labor and
Workforce Development
PO Box 110
Trenton, New Jersey
08625-0110

RE: *Proposed Readoption with Amendments:*
N.J.A.C. 12:56 Wage and Hour
N.J.A.C. 12:57 Wage Orders for Minors
N.J.A.C. 12:58 Child Labor

Attached please find the above-referenced matter which was published in the Monday, November 7, 2005 *New Jersey Register*.

If you have any questions, please contact David Fish, Regulatory Officer at 609-292-2789.

LABOR AND WORKFORCE DEVELOPMENT

(a)

DIVISION OF WAGE AND HOUR COMPLIANCE

Wage and Hour

Proposed Readoption with Amendments: N.J.A.C. 12:56

Authorized By: Thomas D. Carver, 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 calendar requirement.

Proposal Number: PRN 2005-395.

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

Monday, November 28, 2005

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 January 6, 2006 to:

David Fish, Regulatory Officer

Office of Legal & Regulatory Services

NJ Department of Labor and Workforce Development
 PO Box 110 - 13th Floor
 Trenton, New Jersey 08625-0110
 Fax to: (609) 292-8246

If you need this document in Braille, large print or audio cassette, contact the Office of Marketing at (609) 292-7832 or NJ Relay (TTY) 1-800-852-7899.

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 March 21, 2006. 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, with the exception of technical amendments made throughout the chapter which reflect a change in the name of the Department from the "Department of Labor" to the "Department of Labor and Workforce Development," 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, with amendments.

The Department is also currently in the process of undertaking a thorough review of the chapter for purposes of assessing whether additional amendments are needed in order to reflect changes in law or policy. The Department intends to complete that supplemental review within the next six months and, where the Department determines that such amendments are necessary, a notice of proposal containing same will appear in a later issue of the New Jersey Register.

A summary of the subchapters of N.J.A.C. 12:56 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 this chapter.

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

N.J.A.C. 12:56-4 concerns records which 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.

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

Economic Impact

The rules proposed for readoption and the proposed amendments will only impact negatively upon employers who are currently failing to comply with Federal and State 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 Federal and State statute. The Department does not expect to be fiscally impacted as a result of the readoption with amendments of N.J.A.C. 12:56.

Federal Standards Statement

The rules proposed for readoption and the proposed amendments do not contain any standards or requirements which 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 readoption and the proposed amendments 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 readoption and the proposed amendments 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 Federal and State law, thereby enabling them to maintain an adequate standard of living.

Regulatory Flexibility Analysis

The rules proposed for readoption and the proposed amendments 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 readoption and the proposed amendments 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 which are not already in existence or required by Federal and State statutes. 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 would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:56.

Full text of the proposed amendments follows (additions indicated in boldface thus):

12:56-1.3 Administrative penalties

(a) As an alternative to or in addition to any other sanctions provided for in N.J.A.C. 12:56-1.2 under N.J.S.A. 34:11-56 et seq. when the Commissioner of Labor and Workforce Development finds that an employer has violated that Act, the Commissioner is authorized to assess and collect an administrative penalty in the amounts that follow:

1.-2. (No change.)

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following the receipt of the notice.

1.-3. (No change.)

4. All payments shall be made payable to the Commissioner of Labor and Workforce Development, Wage and Hour Trust Fund in the form of a certified check or money order, or such other form suitable to the Commissioner of Labor and Workforce Development.

(c) (No change.)

12:56-2.1 Definitions

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

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

"Division of Wage and Hour Compliance" means Division of Wage and Hour Compliance of Labor Standards and Safety Enforcement of the New Jersey State Department of Labor and Workforce Development, PO Box 389, Trenton, N.J. 08625-0389.

APPENDIX A

AVAILABILITY OF STANDARDS REFERRED TO IN THIS CHAPTER

A copy of each of the standards referenced in this chapter is on file and may be inspected at the following office between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor and Workforce Development
Labor Standards and Safety Enforcement
John Fitch Plaza
Trenton, New Jersey

Copies of the referenced standards may be obtained from the following office:

Division of Wage and Hour Compliance
New Jersey Department of Labor and Workforce Development
PO Box 389
Trenton, New Jersey 08625-0389

(a)

DIVISION OF WAGE AND HOUR COMPLIANCE

Wage Orders for Minors

Proposed Readoption with Amendments: N.J.A.C. 12:57

Authorized By: Thomas D. Carver, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:2-21.64 and 34:11-56a19.

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

Proposal Number: PRN 2005-396.

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

Monday, November 28, 2005
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 January 6, 2006 to:

David Fish, Regulatory Officer
Office of Legal & Regulatory Services
NJ Department of Labor and Workforce Development
PO Box 110 - 13th Floor
Trenton, New Jersey 08625-0110
Fax to: (609) 292-8246

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 12:57, Wage Orders for Minors, is scheduled to expire on March 21, 2006. The re-adoption of these rules is necessary to apply wage rates for the employment of minors employed in mercantile, beauty culture occupations, laundry, cleaning and dyeing occupations and light manufacturing and apparel occupations. The Department has reviewed these rules and, with the exception of technical amendments made throughout the chapter which reflect a change in the name of the Department from the "Department of Labor" to the "Department of Labor and Workforce Development," 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. 12:57 be re-adopted, with amendments.

The Department is also currently in the process of undertaking a thorough review of the chapter for purposes of assessing whether additional amendments are needed in order to reflect changes in law or policy. The Department intends to complete that supplemental review within the next six months and, where the Department determines that such amendments are necessary, a notice of proposal containing same will appear in a later issue of the New Jersey Register.

A summary of the subchapters of N.J.A.C. 12:57 follows:

N.J.A.C. 12:57-1 sets forth the purpose and scope of the chapter, and describes violations and penalties.

N.J.A.C. 12:57-2 defines the words and terms used throughout the chapter.

N.J.A.C. 12:57-3 applies to the minimum wage rates paid to minors engaged in mercantile occupations. It sets forth definitions used in the subchapter, such as "mercantile occupation" and "working time." The subchapter also addresses regular hourly wage, overtime, waiting time, travel time, piece work, employment of minors under existing minimum wage orders for other occupations and under diversified employment, and employment of minors with disabilities. Finally, the subchapter requires that certain records be kept for minors working in mercantile occupations, and further, that notice concerning this subchapter be posted.

N.J.A.C. 12:57-4 addresses minors working in beauty culture occupations. It sets forth definitions for use in the subchapter, and also sets forth criteria for minimum wage, overtime, regular hourly wage, waiting time, gratuities, equipment and the hiring of minor individuals with disabilities. The subchapter also requires that records be kept by the employer, and that the employer post notice setting forth the provisions of the subchapter.

N.J.A.C. 12:57-5 concerns laundry, cleaning and dyeing occupations. The subchapter sets forth the requirements for overtime, minimum wage, regular hourly wage, waiting time, travel time and piece work. It also contains requirements regarding employment of minors with disabilities and recording and posting of notice as to the contents of the subchapter.

N.J.A.C. 12:57-6 applies to minors engaged in light manufacturing and apparel occupations. It sets forth definitions for use in the subchapter, and also sets forth criteria for minimum wage, overtime, waiting time and piece work. The subchapter requires that records be kept by the employer; it addresses the employment of individuals with disabilities;

and it requires that the employer post notice setting forth the provisions of the subchapter.

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 rules proposed for readoption and the posed technical amendments would have a positive social impact in that they would enable the Department to continue its vigilant protection of the fundamental rights of minors in the workplace. Specifically, with the readoption of existing standards, the Department would retain the authority to enforce minimum wage and overtime laws as they relate to minors.

Economic Impact

The rules proposed for readoption, with technical amendments, would require that employers pay minors the statutory minimum wage and that employers adhere to statutory requirements regarding overtime rates relative to minors. To the degree that the enforcement of such essential entitlements would result in increased expenses to employers not already adhering to the law, the rules proposed for readoption would have a negative economic impact upon those employers. The rules proposed for readoption would have a positive economic impact upon minor workers in that they would ensure the receipt by those workers of a fair wage. The Department does not anticipate any economic impact upon itself as the result of the readoption of these rules.

Federal Standards Statement

The rules proposed for readoption, with technical amendments, do not exceed standards or requirements imposed by Federal law. See 29 U.S.C. §§201 et seq. Consequently, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption, with technical amendments, would 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 readoption and the proposed amendments would continue to ensure that all workers who are minors, including those in the agriculture industry, receive the minimum pay and benefits to which they are entitled consistent with Federal and State law, thereby enabling them to maintain an adequate standard of living.

Regulatory Flexibility Analysis

The rules proposed for readoption with technical amendments would require that all those who employ minors engaged in mercantile, beauty culture, laundry, cleaning and dyeing, light manufacturing and apparel occupations, including small businesses, as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., must not only compensate those minors at no less than the statutory minimum wage rate and, for overtime, at a rate no less than one and one-half times the regular rate at which the employee is actually employed, but also must maintain records necessary in determining both a minor employee's regular hourly wage and the amount of overtime wages earned and, further, must post notices setting forth applicable rules of the Department of Labor and Workforce Development.

The rules proposed for readoption and the proposed amendments would not require any employers to hire outside professional services, although some of the larger employers may prefer to contract payroll services. Additionally, the rules would not impose any new requirements on employers which are not already in existence or required by Federal and State statutes. 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 business based upon size for purposes of compliance and reporting.

Smart Growth Impact

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

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:57.

Full text of the proposed amendments follows (additions indicated in boldface thus):

12:57-2.1 Definitions

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

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

"Division of Wage and Hour Compliance" means the Division of Wage and Hour Compliance within the Labor Standards and Safety Enforcement program area of the New Jersey State Department of Labor and Workforce Development, PO Box 389, Trenton, N.J. 08625.

12:57-6.8 Posting

This subchapter or an abstract thereof shall be posted in a conspicuous place in every room where minors are employed at the occupations covered by this subchapter. A copy of such abstract may be obtained from:

New Jersey Department of Labor and Workforce Development
Division of Wage and Hour Compliance
PO Box 389
Trenton, New Jersey 08625-0389

(a)

DIVISION OF WAGE AND HOUR COMPLIANCE

Child Labor

Proposed Readoption with Amendments: N.J.A.C. 12:58

Authorized By: Thomas D. Carver, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:1-20; 34:1A-3(e); 34:2-21.1 et seq., specifically, 34:2-21.64; and 34:11-56a19.

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

Proposal Number: PRN 2005-397.

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

Monday, November 28, 2005

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 January 6, 2006 to:

David Fish, Regulatory Officer

Office of Legal & Regulatory Services

NJ Department of Labor and Workforce Development

PO Box 110 - 13th Floor

Trenton, New Jersey 08625-0110

Fax to: (609) 292-8246

If you need this document in Braille, large print or audio cassette, contact the Office of Marketing at (609) 292-7832 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 12:58, Child Labor, is scheduled to expire on March 21, 2006. The New Jersey State Child Labor Laws, N.J.S.A. 34:2-21.1 et seq. and 34:2-21.57 et seq., were enacted in order to protect minors from exploitation in employment as well as to protect the health, safety and welfare of minors. The Child Labor Laws also protect the primacy of minors' education relative to their

roles in the workforce. The Department has reviewed these rules and, with the exception of technical amendments made throughout the chapter which reflect a change in the name of the Department from the "Department of Labor" to the "Department of Labor and Workforce Development," 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. 12:58 be readopted, with amendments.

The Department is also currently in the process of undertaking a thorough review of the chapter for purposes of assessing whether additional amendments are needed in order to reflect changes in law or policy. The Department intends to complete that supplemental review within the next six months and, where the Department determines that such amendments are necessary, a notice of proposal containing same will appear in a later issue of the New Jersey Register.

A summary of the subchapters of N.J.A.C. 12:58 follows:

N.J.A.C. 12:58-1 sets forth the general provisions of the chapter. Specifically, it identifies the purpose and scope of the chapter and provides that the chapter is not applicable to apprentices and student learners in cooperative vocational education programs. It also provides a cross-reference to the rules governing the School to Work program.

N.J.A.C. 12:58-2 defines the words and terms used throughout the chapter.

N.J.A.C. 12:58-3 addresses occupations prohibited to minors under 16 years of age.

N.J.A.C. 12:58-4 addresses occupations prohibited to minors under 18 years of age.

N.J.A.C. 12:58-5 concerns violations and administrative penalties.

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 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 rules proposed for readoption and the proposed amendments would continue to have a positive impact on both employers and employees, in that they would enable the Department to continue enforcing the existing Child Labor Laws which provide a safe work environment for minors. The rules also provide working guidelines for use by employers, when determining in what capacities and within which parameters they are permitted to employ minors.

Economic Impact

The rules proposed for readoption and the proposed amendments would not adversely impact employers; they would merely outline the situations in which minors can be employed. Although these rules may exclude minors from certain specified occupations, they have a positive impact since such prohibitions would contribute to the ultimate benefit of the minors by ensuring that they are employed only in safe occupations. The Department does not expect to be economically affected by the readoption of these rules.

Federal Standards Statement

The rules proposed for readoption and the proposed amendments do not exceed standards or requirements imposed by Federal law. See 29 U.S.C. §§201 et seq. Consequently, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption and the proposed amendments would 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 readoption and the proposed amendments would continue to enable the Department to enforce existing Child Labor Laws, which provide a safe work environment for all minors, including those in the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption and the proposed amendments would not impose reporting or recordkeeping requirements on small

businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules would merely list occupations which are prohibited to minors. No professional services would be required in order to comply with these rules.

Smart Growth Impact

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

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:58.

Full text of the proposed amendments follow (additions indicated in boldface thus):

12:58-2.1 Definitions

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

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

12:58-5.3 Administrative penalties

(a) (No change.)

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following the receipt of the notice.

1.-3. (No change.)

4. All payments shall be made payable to the Commissioner of Labor and Workforce Development, Child Labor Account. All payments shall be made by certified check or money order, or payable in a form suitable to the Commissioner of Labor and Workforce Development.

(c) (No change.)

APPENDIX A

Availability of Standards and Publications Referred to in this Chapter

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office within the Labor Standards and Safety Enforcement program area between the hours of 9:00 A.M. and 4:00 P.M. on normal working days.

New Jersey Department of Labor and Workforce Development
Labor Standards and Safety Enforcement
John Fitch Plaza
Trenton, New Jersey

Copies of the referenced standards may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning and are the organizations issuing the standards and publications listed.

N.J.S.A. New Jersey Statutes Annotated
Copies available from:
Division of Wage and Hour Compliance
New Jersey Department of Labor and Workforce
Development
PO Box 389
Trenton, N.J. 08625-0389