

CHAPTER 56

WAGE AND HOUR

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.

Source and Effective Date

R.2011 d.233, effective August 4, 2011.
See: 43 N.J.R. 553(a), 43 N.J.R. 2351(a).

Chapter Expiration Date

Chapter 56, Wage and Hour, expires on August 4, 2018.

Chapter Historical Note

Chapter 56, New Jersey State Wage and Hour Law, was adopted and became effective prior to September 1, 1969.

Chapter 56, New Jersey State Wage and Hour Law, was repealed and Chapter 56, Wage and Hour, was adopted as new rules by R.1980 d.430, effective November 1, 1980. See: 12 N.J.R. 484(e), 12 N.J.R. 666(c).

Pursuant to Executive Order No. 66(1978), Chapter 56, Wage and Hour, was readopted as R.1985 d.524, effective September 26, 1985. See: 17 N.J.R. 2008(a), 17 N.J.R. 2561(b).

Pursuant to Executive Order No. 66(1978), Chapter 56, Wage and Hour, was readopted as R.1990 d.520, effective September 26, 1990, and N.J.A.C. 12:56-14.10 was recodified as Subchapter 17, Uniforms, and Subchapter 16, Payroll Deductions for Mass Transportation, was recodified as Chapter 55, Wage Payments, by R.1990 d.520, effective November 5, 1990. See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b).

Subchapter 10, Employment of Learners, Apprentices and Students, was repealed and Subchapter 10, Employment of Learners; Sub-Minimum Wage, was adopted as new rules by R.1992 d.328, effective August 17, 1992. See: 24 N.J.R. 2129(b), 24 N.J.R. 2924(a).

Pursuant to Executive Order No. 66(1978), Chapter 56, Wage and Hour, was readopted as R.1995 d.553, effective September 22, 1995, and Subchapter 10, Employment of Learners; Sub-Minimum Wage, was repealed and Subchapter 18, School-to-Work Program, was adopted as new rules by R.1995 d.553, effective October 16, 1995. See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

Subchapter 19, Employment in the Trucking Industry, was adopted as R.1996 d.375, effective August 5, 1996. See: 28 N.J.R. 1475(a), 28 N.J.R. 3798(c).

Subchapter 20, Employment of Skilled Mechanics, was adopted as R.1996 d.376, effective August 5, 1996. See: 28 N.J.R. 1476(a), 28 N.J.R. 3800(a).

Pursuant to Executive Order No. 66(1978), Chapter 56, Wage and Hour, was readopted as R.2000 d.423, effective September 22, 2000. See: 32 N.J.R. 2643(a), 32 N.J.R. 3855(a).

Chapter 56, Wage and Hour, was readopted as R.2006 d.88, effective January 26, 2006. See: 37 N.J.R. 4170(a), 38 N.J.R. 1190(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 56, Wage and Hour, was scheduled to expire on July 25, 2013. See: 43 N.J.R. 1203(a).

Chapter 56, Wage and Hour, was readopted as R.2011 d.233, effective August 4, 2011. See: Source and Effective Date.

Subchapter 7, Exemptions from Overtime, was repealed, and Subchapter 7, Exemptions from Overtime, was adopted as new rules by R.2011 d.240, effective September 6, 2011. See: 43 N.J.R. 725(a), 43 N.J.R. 2352(a).

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APPENDIX A. AVAILABILITY OF STANDARDS REFERRED TO IN THIS CHAPTER

SUBCHAPTER 1. GENERAL PROVISIONS

12:56-1.1 Purpose; scope

(a) The purpose of this subchapter is to establish rules to effectuate N.J.S.A. 34:11-56a et seq., the New Jersey State Wage and Hour Law (Act), to provide sanctions for non-compliance, and to protect established wage rates.

(b) The chapter is applicable to:

1. Wages and hours subject to the Act; and
2. Wages paid to an employee for services rendered.

(c) This chapter shall not apply to:

1. Volunteers; or
2. Patients.

New Rule, R.1990 d.520, effective November 5, 1990.

See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b).

Repealed existing 12:56-1.1, Title and citation, 12:56-1.2, Purpose, 12:56-1.3, Scope, and 12:56-1.4, Validity.

12:56-1.2 Violations

(a) A violation of the Act shall occur when an employer:

1. Willfully hinders or delays the Commissioner in the performance of the duties of the Commissioner in the enforcement of this chapter;
2. Fails to make, keep and preserve any records as required under the provisions of this chapter;
3. Falsifies any such record;
4. Refuses to make any such record accessible to the Commissioner upon demand;
5. Refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the Commissioner upon demand;
6. Pays or agrees to pay wages at a rate less than the rate applicable under this chapter or any wage order issued pursuant thereto;
7. Requests, demands, or receives, either for himself, herself or any other person, either before or after a worker is engaged in public or private work at a specified rate of wages, the following:
 - i. That such worker forego, pay back, return, donate, contribute or give any part, or all, of his or her wages, salary or thing of value, to any person upon the statement, representation or understanding that failure to

Case Notes

Application of regular hourly wage formula to taxi driver's situation places them on the same level as other piece-rate basis employees. *Yellow Cab Co. of Camden v. State*, 126 N.J. Super. 81, 312 A.2d 870 (App. Div. 1973), certification denied 64 N.J. 498, 317 A.2d 711 (1974).

12:56-6.6 Items excluded from "regular hourly wage"

(a) The "regular hourly wage" shall not be deemed to include:

1. Payments in the nature of gifts made on holidays or on other special occasions or as a reward for service, the amounts of which are not measured by or dependent on hours worked, production or efficiency;

2. Payments made for occasional periods when no work is performed due to vacation, holiday or other similar cause;

3. Reasonable payments for traveling or other expenses incurred by an employee in the furtherance of his or her employer's interests and properly reimbursable by the employer which are not made as compensation for employment;

4. Sums paid in recognition of services performed during a given period if either:

i. Both the fact that payment is to be made and the amount of payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement or promise causing the employee to expect such payments regularly; or

ii. The payments are made pursuant to a bona fide profit-sharing plan or trust, or thrift or savings plan to the extent to which the amounts paid to the employee are determined without regard to hours of work, production or efficiency; or

5. Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan providing for old age, retirement, life, accident, or health insurance or similar benefits for employees; or

6. Additional premium compensation for hours worked in excess of eight hours per day, or for work on Saturdays, Sundays, holidays, or regular days of rest; or

7. Overtime premiums.

Amended by R.1990 d.520, effective November 5, 1990.
See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b).
Stylistic revisions.

12:56-6.7 Offsets; cash payments

(a) Overtime premium payments shall not be offset by allowances for the value of food, lodging or gratuities since

such allowances are already considered in determining the straight time wages paid. Overtime premium payments shall be cash payments by the employer.

(b) Where the employee's pay includes the value of gratuities, food or lodging and it is not feasible to determine the exact regular hourly wage during a particular week, the employer shall be deemed to have fulfilled the overtime requirements of this chapter if the premium payment for the overtime hours is paid in cash on the basis of the agreed hourly wage, but in no event shall the premium payment be at a rate less than the applicable minimum rate.

Case Notes

Limousine drivers were not entitled to overtime wages where overtime payments were offset against gratuities paid to drivers. *Charte v. A-1 Limousine, Inc.*, 96 N.J.A.R.2d (LBR) 76.

SUBCHAPTER 7. EXEMPTIONS FROM OVERTIME**12:56-7.1 Employees exempt from overtime**

Any individual employed in a bona fide executive, administrative, professional or outside sales capacity shall be exempt from the overtime requirements of N.J.A.C. 12:56-6.1.

12:56-7.2 Defining and delimiting the exceptions from overtime for executive, administrative, professional and outside sales employees

(a) Except as set forth in (b) below, the provisions of 29 CFR Part 541 are adopted herein by reference.

(b) Not adopted by reference are those provisions within 29 CFR Part 541 that apply solely to those individuals employed by government employers, including, but not limited to, those individuals employed by State, county and municipal employers, since the definition of the term "employer" within N.J.S.A. 34:11-56a1 does not include government employers. See N.J.S.A. 34:11-56a1 ("employer" includes any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee); See also, *Allen v. Fauver*, 167 N.J. 69 (2001).

SUBCHAPTER 8. GRATUITIES, FOOD AND LODGING**12:56-8.1 Definitions**

(a) "Fair value" means not more than the actual cost to the employer of the food or lodging supplied by an employer and does not include a profit to the employer nor to any affiliated business or person.