

CHAPTER 56
WAGE AND HOUR

Authority

N.J.S.A. 34:1-20; 34:1A-3(e); 34:2-21.64 and 34:11-56(a)19.

Source and Effective Date

R.1995 d.553, effective September 22, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

Executive Order No. 66(1978) Expiration Date

Chapter 56, Wage and Hour, expires on September 22, 2000.

Chapter Historical Note

Chapter 56, originally New Jersey State Wage and Hour Law, was filed and became effective prior to September 1, 1969. Chapter 56 was repealed and new Wage and Hour rules were adopted as R.1980 d.430, effective November 1, 1980.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 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 was readopted as R.1990 d.520, effective September 26, 1990. As a part of the readoption but effective November 5, 1990, N.J.A.C. 12:56-14.10 was recodified as new Subchapter 17, Uniforms, and Subchapter 16, Payroll Deductions for Mass Transportation, was recodified as new Chapter 55, Wage Payments. The original text of Subchapter 10 was amended by R.1990 d.520, which clarified the authority of the Commissioner of Labor in 12:56-10.5, Cancellation of permit, effective November 5, 1990. See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b). Pursuant to N.J.S.A. 2A:150A-1 and 34:11-56(a), specifically 34:11-56(a)17, Subchapter 10, originally Employment of Learners, Apprentices and Students, was repealed and new rules, Employment of Learners; Sub-Minimum Wage, were adopted as R.1992 d.328, effective August 17, 1992.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 was readopted as R.1995 d.553, effective September 22, 1995. As part of the readoption, Subchapter 10, Employment of Learners; Sub-Minimum Wage, was repealed, and Subchapter 18 was adopted. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:56-1.1 Purpose; scope
- 12:56-1.2 Violations
- 12:56-1.3 Administrative penalties
- 12:56-1.4 Administrative fees
- 12:56-1.5 Hearings
- 12:56-1.6 Discharge or discrimination against employee making complaint

SUBCHAPTER 2. DEFINITIONS

- 12:56-2.1 Definitions

SUBCHAPTER 3. MINIMUM WAGE RATES

- 12:56-3.1 Statutory minimum wage rates for specific years
- 12:56-3.2 Exemptions from the statutory minimum wage rates

SUBCHAPTER 4. RECORDS

- 12:56-4.1 Contents

- 12:56-4.2 Time keeping system
- 12:56-4.3 Fixed working schedule
- 12:56-4.4 Retention period
- 12:56-4.5 Location; inspection
- 12:56-4.6 Employer gratuity records
- 12:56-4.7 Employee gratuity reports
- 12:56-4.8 Acceptable gratuity report form
- 12:56-4.9 Food or lodging records
- 12:56-4.10 Additions to wages

SUBCHAPTER 5. HOURS WORKED

- 12:56-5.1 Payment
- 12:56-5.2 Computation
- 12:56-5.3 Accounting for irregular hours of resident employees
- 12:56-5.4 Workweek construed
- 12:56-5.5 Reporting for work
- 12:56-5.6 On-call time
- 12:56-5.7 On-call employees required to remain at home

SUBCHAPTER 6. OVERTIME

- 12:56-6.1 Rate of overtime payment
- 12:56-6.2 Computation
- 12:56-6.3 Actual wage basis
- 12:56-6.4 Workweek hours
- 12:56-6.5 "Regular hourly wage" payment basis
- 12:56-6.6 Items excluded from "regular hourly wage"
- 12:56-6.7 Offsets; cash payments

SUBCHAPTER 7. EXEMPTIONS FROM OVERTIME

- 12:56-7.1 Definition of executive
- 12:56-7.2 Definition of administrative
- 12:56-7.3 Definition of professional
- 12:56-7.4 Definition of outside sales person
- 12:56-7.5 Outside service employees
- 12:56-7.6 Employees exempt from overtime

SUBCHAPTER 8. GRATUITIES, FOOD AND LODGING

- 12:56-8.1 Definitions
- 12:56-8.2 Gratuity splitting
- 12:56-8.3 Determining cash gratuities
- 12:56-8.4 Administrative handling of gratuities
- 12:56-8.5 Additional cash contribution claim
- 12:56-8.6 Fair value computed
- 12:56-8.7 Inspection of fair value methods
- 12:56-8.8 Method of determining "fair value"
- 12:56-8.9 (Reserved)

SUBCHAPTER 9. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

- 12:56-9.1 Definitions
- 12:56-9.2 Application for permit
- 12:56-9.3 Criteria for permit
- 12:56-9.4 Compliance
- 12:56-9.5 Cancellation of permit

SUBCHAPTER 10. (RESERVED)

SUBCHAPTER 11. EMPLOYMENT IN THE FIRST PROCESSING OF FARM PRODUCTS OCCUPATIONS

- 12:56-11.1 Definitions
- 12:56-11.2 Minimum wage
- 12:56-11.3 Overtime rates

SUBCHAPTER 12. EMPLOYMENT IN SEASONAL AMUSEMENT OCCUPATIONS

- 12:56-12.1 Definitions
- 12:56-12.2 Minimum wage

12:56-12.3 Overtime rates

SUBCHAPTER 13. EMPLOYMENT IN HOTEL AND MOTEL OCCUPATIONS

- 12:56-13.1 Definitions
- 12:56-13.2 Minimum wage
- 12:56-13.3 Overtime rates
- 12:56-13.4 Cash wage standard
- 12:56-13.5 Substantiation of gratuities; food and lodging cost
- 12:56-13.6 Food and lodging as wages over 40 hours
- 12:56-13.7 Cash wage condition of employment
- 12:56-13.8 Required food and lodging acceptance; costs

SUBCHAPTER 14. EMPLOYMENT IN FOOD SERVICE OCCUPATIONS

- 12:56-14.1 Definitions
- 12:56-14.2 Minimum wage
- 12:56-14.3 Overtime rates
- 12:56-14.4 Cash wage standard
- 12:56-14.5 Substantiation of gratuities, food and lodging cost
- 12:56-14.6 Food and lodging as wages over 40 hours
- 12:56-14.7 Cash wage condition of employment
- 12:56-14.8 Meals and lodging applicable to minimum wage

SUBCHAPTER 15. EMPLOYMENT IN AIR CARRIER INDUSTRY

- 12:56-15.1 Definitions
- 12:56-15.2 Minimum wage
- 12:56-15.3 Overtime rates

SUBCHAPTER 16. INDEPENDENT CONTRACTOR STATUS

- 12:56-16.1 Independent contractor status criteria

SUBCHAPTER 17. UNIFORMS

- 12:56-17.1 Uniforms

SUBCHAPTER 18. SCHOOL-TO-WORK PROGRAM

- 12:56-18.1 Definitions
- 12:56-18.2 School-to-work program requirements

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 employee:

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 comply with such request or demand will prevent such worker from procuring or retaining employment; or

8. Otherwise violates any provision of this chapter or of any order issued under this chapter.

(b) An employer who knowingly and willfully violates any provision of N.J.S.A. 34:11-56a et seq. shall be guilty of a disorderly persons offense and shall, upon conviction for a first violation, be punished by a fine of not less than \$100.00 nor more than \$1,000, or by imprisonment for not less than 10 nor more than 90 days, or by both the fine and imprisonment.

(c) The employer shall, upon conviction for a second or subsequent violation, be punished by a fine of not less than \$500.00 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment.

(d) Each week in any day of which an employee is paid less than the rate applicable to him or her under the Act or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

(e) The wage rate applicable to the employee shall conform to the overtime provisions of N.J.A.C. 12:56-6.

Recodified from N.J.A.C. 12:56-1.5 by R.1990 d.520, effective November 5, 1990.

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

Repeal and New Rule, R.1991 d.606, effective December 16, 1991.

See: 23 N.J.R. 2942(a), 23 N.J.R. 3810(a).

Section was "Violations".

Amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

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 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. First violation—not more than \$250.00;
2. Second and subsequent violation—not less than \$25.00 nor more than \$500.00.

(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. If a hearing is not requested, the notice shall become the Final Order upon the expiration of the 15 business day period following receipt of the notice.

2. If a hearing is requested, the Commissioner shall issue a Final Order upon such hearing and a finding that a violation has occurred.

3. All wages due, fees and penalties shall be paid within 30 days of the date of Final Order. Failure to pay such wages due, fees and/or penalty shall result in a judgment being obtained in a court of competent jurisdiction.

4. All payments shall be made payable to the Commissioner of Labor, 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.

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:

1. The seriousness of the violation;
2. The past history of previous violations by the employer;
3. The good faith of the employer;
4. The size of the employer's business; and

5. Any other factors which the Commissioner deems to be appropriate in the determining of the penalty assessed.

Recodified from N.J.A.C. 12:56-1.6 by R.1990 d.520, effective November 5, 1990.

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

Stylistic revisions.

Repeal and New Rule, R.1991 d.606, effective December 16, 1991.

See: 23 N.J.R. 2942(a), 23 N.J.R. 3810(a).

Section was "Discharge or discrimination against employee making complaint".

Amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-1.4 Administrative fees

(a) The Commissioner is authorized to supervise the payment of amounts due to employees under this chapter, and the employer may be required to make these payments to the Commissioner to be held in a special account in trust for the employee, and paid on order of the Commissioner to the employee or employees affected.

(b) The employer shall also pay the Commissioner an administrative fee on all payments of gross amounts due to employees pursuant to Articles 1 and 2 of Chapter II of Title 34 of the revised statutes.

(c) A schedule of the administrative fees is set forth in Table 1.4(c) below.

Table 1.4(c)

Schedule of Administrative Fees

1. First Violation—10 percent of amount of any payment made to the Commissioner pursuant to this chapter.
2. Second Violation—18 percent of amount of any payment made to the Commissioner pursuant to this chapter.
3. Third and Subsequent Violations—25 percent of amount of any payment made to the Commissioner pursuant to this chapter.

New Rule, R.1991 d.606, effective December 16, 1991.

See: 23 N.J.R. 2942(a), 23 N.J.R. 3810(a).

12:56-1.5 Hearings

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:56-1.3, the employer shall have the right to a hearing under (b) below.

(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 formal hearing must be received within 15 business days following the receipt of the notice. All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

(c) All requests for hearing will be reviewed by the Office of Wage and Hour Compliance to determine if the reason for dispute could be resolvable at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference will be scheduled. If a settlement cannot be reached, the case will be forwarded to the Office of Administrative Law for a formal hearing.

(d) The Commissioner shall make the final decision of the Department.

(e) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

(f) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his or her designee may, for good cause shown, re-schedule a hearing.

(g) If the Commissioner or his or her designee does not authorize such a re-scheduled hearing, then the Commissioner shall issue a final agency determination effective upon the date set for the original hearing.

(h) Payment of the penalty is due when a final agency determination is issued.

(i) Upon final order the penalty imposed may be recovered with cost in a summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

New Rule, R.1991 d.606, effective December 16, 1991.
See: 23 N.J.R. 2942(a), 23 N.J.R. 3810(a).
Amended by R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).
Inserted new (c).

12:56-1.6 Discharge or discrimination against employee making complaint

(a) An employer is a disorderly person, if he or she discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer or to the Commissioner that he or she has not been paid wages in accordance with the provisions of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding, or because such employee has served or is about to serve on a wage board, and shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000. Such employer shall be required, as a condition of such judgment of conviction, to offer reinstatement in employment to any such discharged employee and to correct any such discriminatory action, and also to pay to any such employee in full, all wages lost as a result of such discharge or discriminatory action, under penalty of contempt proceedings for failure to comply with such requirement.

(b) As an alternative to, or in addition to, any sanctions imposed under (a) above, the Commissioner is authorized under N.J.S.A. 34:11-56a24 to assess and collect administrative penalties as provided for in N.J.A.C. 12:56-1.3.

New Rule, R.1991 d.606, effective December 16, 1991.
See: 23 N.J.R. 2942(a), 23 N.J.R. 3810(a).

SUBCHAPTER 2. DEFINITIONS

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:

“Act” means the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a et seq.

“Commissioner” means the Commissioner of the Department of Labor or his or her designee.

“Covered employee” means an employee subject to this chapter.

“Employ” means to suffer or permit to work.

“Employee” includes any individual employed by an employer, except:

1. For trainees who are involved in a program in which:

i. The training is for the primary benefit of the trainee;

ii. The employment for which the trainee is training requires some cognizable trainable skill;

iii. The training is not specific to the employer, that is, is not exclusive to its needs, but may be applicable elsewhere for another employer or in another field of endeavor;

iv. The training, even though it includes actual operation of the facilities of the employer, is similar to that which may be given in a vocational school;

v. The trainee does not displace a regular employee on a regular job or supplement a regular job, but trains under close tutorial observation;

vi. The employer derives no immediate benefit from the efforts of the trainee and, indeed, on occasion may find his or her regular operation impeded by the trainee;

vii. The trainee is not necessarily entitled to a job at the completion of training;

viii. The training program is sponsored by the employer, is outside regular work hours, the employee does no productive work while attending and the program is not directly related to the employee's present job (as distinguished from learning another job or additional skill); and

ix. The employer and the trainee share a basic understanding that regular employment wages are not due for the time spent in training, provided that the trainee does not perform any productive work.

2. If a trainee does not meet all of the above-listed criteria, the trainee shall be considered to be an employee.

"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.

"Fair wage" means a wage fairly and reasonably commensurate with the value of the service or class of service rendered and sufficient to meet the minimum cost of living necessary for health.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

"Office of Wage and Hour Compliance" means Office of Wage and Hour Compliance of Division of Workplace Standards of New Jersey State Department of Labor, CN 389, Trenton, N.J. 08625.

"Oppressive and unreasonable wage" means a wage which is both less than the fair and reasonable value of the service rendered and less than sufficient to meet the minimum cost of living necessary for health.

"Patient" means a person, such as an alcoholic or drug addict receiving inconsequential payments in a program administered by an organized and generally recognized charity.

"Premium pay" means a sum of money or bonus paid in addition to the regular price, salary or other amount.

"Regular hourly wage" means the amount that an employee is regularly paid for each hour of work as determined by dividing total hours of work during the week into the employee's total earnings for the week, exclusive of overtime premium pay.

"Volunteer" means a person who donates his or her service for the protection of the health and safety of the

general public. Such a person would include, among others, a volunteer fireman, rescue worker, an aide in the care of the sick, aged, young, mentally ill, destitute and the like or assistant in religious, cleemosynary, educational, hospital, cultural and similar activities.

"Wages" means any monies due an employee from an employer for services rendered or made available by the employee to the employer as a result of their employment relationship including commissions, bonus and piecework compensation and including any gratuities received by an employer to an employee.

"Work hours" means the actual hours suffered or permitted to work.

Amended by R.1989 d.304, effective June 5, 1989.

See: 21 N.J.R. 692(a), 21 N.J.R. 1578(a).

Exceptions related to trainee status added to the definition of employee.

Amended by R.1990 d.520, effective November 5, 1990.

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

Deleted various definitions already defined in N.J.A.C. 12:56.

Amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

Added definition of "work hours".

SUBCHAPTER 3. MINIMUM WAGE RATES

12:56-3.1 Statutory minimum wage rates for specific years

(a) Except as provided in N.J.A.C. 12:56-3.2, employees shall be paid minimum wage rates of not less than:

1. \$3.80 per hour for each hour of working time, effective May 3, 1990;
2. \$4.25 per hour for each hour of working time, effective April 1, 1991; and
3. \$5.05 per hour for each hour of working time, effective April 1, 1992.

Amended by R.1990 d.520, effective November 5, 1990.

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

In (a)1-3, increased minimum wage for newly adjusted current and future years.

12:56-3.2 Exemptions from the statutory minimum wage rates

(a) Employees in the following occupations shall be exempt from the statutory minimum wage rates:

1. Full-time students employed by the college or university at which they are enrolled at not less than 85 percent of the effective minimum wage rate, effective March 1, 1979;
2. Outside sales person;
3. Sales person of motor vehicles;

4. Part time employees primarily engaged in the care and tending of children in the home of the employer;

5. Minors under 18 years of age except as provided in N.J.A.C. 12:56-11, 12:56-13, 12:56-14 and N.J.A.C. 12:57, Wage Orders for Minors; and

6. At summer camps, conferences and retreats operated by any nonprofit or religious corporation or association during the months of June, July, August and September.

Administrative Correction to (a)5.

See: 15 N.J.R. 43(b).

Amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

SUBCHAPTER 4. RECORDS

12:56-4.1 Contents

Every employer shall keep records which contain the name and address of each employee, the birth date if under the age of 18, the hours worked each day and each work-week, earnings, including the regular hourly wage, gross to net amounts with itemized deductions, and the basis on which wages are paid.

Amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-4.2 Time keeping system

The employer may use any system of time keeping containing the items specified in N.J.A.C. 12:56-4.1, provided it is a complete, true and accurate record.

12:56-4.3 Fixed working schedule

(a) Many employees, particularly in offices, are on a fixed working schedule from which they seldom vary. In these instances, the employer may keep a record showing the exact schedule of daily and weekly work hours that the employee is expected to follow and merely indicate each workweek that the schedule was followed.

(b) When the employee works longer or shorter hours than the schedule indicates, the employer shall record the hours the employee actually worked.

Amended by R.1990 d.520, effective November 5, 1990.

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

12:56-4.4 Retention period

Records containing the information required by this subchapter shall be kept for six years.

12:56-4.5 Location; inspection

(a) Records shall be kept at the place of employment or in a central office in New Jersey, except as provided in (b) below.

(b) In unusual circumstances where it is not feasible to keep records in New Jersey, exception from this provision may be obtained from the Commissioner.

(c) All records shall be open to inspection by the Commissioner at any reasonable time.

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.

In (c): deleted text referring to the "assistant director or his authorized representative," indicating only the Commissioner.

12:56-4.6 Employer gratuity records

Supplementary to the provisions of any section of this chapter pertaining to the records to be kept with respect to employee, every employer of employees who receive gratuities shall also maintain and preserve payroll or other records containing the total gratuities received by each employee during the payroll week.

12:56-4.7 Employee gratuity reports

(a) Employees receiving gratuities shall report them either daily or weekly as required by the employer. The information in the report shall include:

1. The employee's name, address and social security number;
2. The name and address of the employer;
3. The calendar day or week covered by the report; and
4. The total amount of gratuities received.

Amended by R.1990 d.520, effective November 5, 1990.

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

12:56-4.8 Acceptable gratuity report form

The United States Treasury Department, Internal Revenue Service, "Employee's Report on Tips" shall be acceptable in those instances where the report is made on a weekly basis or less.

12:56-4.9 Food or lodging records

(a) Supplementary to the provisions of any section of this chapter pertaining to the records to be kept with respect to employees, every employer, who claims credit for food or lodging as a cash substitute for employees who receive food or lodgings supplied by the employer, shall maintain and preserve records substantiating the cost of furnishing such food or lodgings.

(b) Such records shall include the nature and amount of any expenditures entering into the computation of the fair value of the food or lodging and shall contain the date required to compute the amount of the depreciated investment in any assets allocable to the furnishing of the lodgings, including the date of acquisition or construction, the original cost, the rate of depreciation and the total amount of accumulated depreciation on such assets. No particular degree of itemization is prescribed. The amount of detail shall be sufficient to enable the Commissioner, assistant director or his or her authorized representative to verify the nature of the expenditure and amount by reference to the basic records which shall be preserved pursuant to this chapter.

Amended by R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-4.10 Additions to wages

If additions to wages paid so affect the total cash wages due in any workweek as to result in the employee receiving less in cash than the minimum hourly wage provided in the act or in any applicable wage order or if the employee works in excess of 40 hours a week the employer shall maintain records showing those additions to wages by reason of gratuities or food, or lodgings paid on a workweek basis.

SUBCHAPTER 5. HOURS WORKED

12:56-5.1 Payment

Employees entitled to the benefits of the act shall be paid for all hours worked.

12:56-5.2 Computation

(a) All the time the employee is required to be at his or her place of work or on duty shall be counted as hours worked.

(b) Nothing in this chapter requires an employer to pay an employee for hours the employee is not required to be at his or her place of work because of holidays, vacation, lunch hours, illness and similar reasons.

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.

12:56-5.3 Accounting for irregular hours of resident employees

Employees who reside on the employer's premises and whose hours worked are irregular and intermittent to the extent that it is not feasible to account for the hours actually on duty may be compensated for not less than eight hours for each day on duty in lieu of any other applicable provisions.

12:56-5.4 Workweek construed

(a) A workweek shall be a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods.

(b) The workweek need not be the same as the calendar week and may begin any day of the week and any hour of the day.

(c) The workweek shall be designated to the employee in advance.

(d) Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of the hours worked.

(e) The beginning of the workweek may be changed if the change is intended to be permanent and is not intended to evade the overtime requirements of the act.

12:56-5.5 Reporting for work

(a) An employee who by request of the employer reports for duty on any day shall be paid for at least one hour at the applicable wage rate, except as provided in (b) below.

(b) The provisions of (a) above shall not apply to an employer when he or she has made available to the employee the minimum number of hours of work agreed upon by the employer and the employee prior to the commencement of work on the day involved.

Amended by R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-5.6 On-call time

(a) When employees are not required to remain on the employer's premises and are free to engage in their own pursuits, subject only to the understanding that they leave word at their home or with the employer where they may be reached, the hours shall not be considered hours worked. When an employee does go out on an on-call assignment, only the time actually spent in making the call shall be counted as hours worked.

(b) If calls are so frequent or the "on-call" conditions so restrictive that the employees are not really free to use the intervening periods effectively for their own benefit, they may be considered as "engaged to wait" rather than "waiting to be engaged". In that event, the waiting time shall be counted as hours worked.

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

Clarified text to specify "on-call time" and when hours are considered hours worked.
Administrative Correction to (a).
See: 23 N.J.R. 1416(c).

12:56-5.7 On-call employees required to remain at home

"On-call" employees may be required by their employer to remain at their homes to receive telephone calls from customers when the company office is closed. If "on-call" employees have long periods of uninterrupted leisure during which they can engage in the normal activities of living, any reasonable agreement of the parties for determining the number of hours worked shall be accepted. The agreement shall take into account not only the actual time spent in answering the calls but also some allowance for the restriction on the employee's freedom to engage in personal activities resulting from the duty of answering the telephone.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-6.5 "Regular hourly wage" payment basis

(a) The "regular hourly wage" is a rate per hour.

(b) The act does not require employers to compensate employees on an hourly rate basis. Their earnings may be determined on a piece-rate, salary, bonus, commission or other basis, but the overtime compensation due to employees shall be paid on the basis of the hourly rate derived therefrom. Therefore, the regular hourly wage of an employee is determined by dividing his or her total remuneration for employment, exclusive of overtime premium pay, in any workweek, by the total number of hours worked in that workweek for which such compensation was paid.

(c) If an employee is remunerated solely on the basis of a single hourly rate, the hourly rate shall be his or her "regular hourly wage".

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

SUBCHAPTER 6. OVERTIME**12:56-6.1 Rate of overtime payment**

For each hour of working time in excess of 40 hours in any week, except as provided in N.J.A.C. 12:56-7.5, every employer shall pay to each of his or her employees, wages at a rate of not less than 1½ times such employee's regular hourly wage.

Amended by R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-6.2 Computation

(a) Overtime and minimum wage pay shall be computed on the basis of each workweek standing alone.

(b) Hours shall not be averaged over two or more workweeks.

12:56-6.3 Actual wage basis

Covered employees shall be entitled to overtime pay based upon their actual wages and not the specified minimum wages.

12:56-6.4 Workweek hours

(a) Covered employees shall be paid 1½ times the regular hourly wage for each hour of working time in excess of 40 hours in any workweek.

(b) There is no requirement that an employee be paid premium overtime compensation for hours in excess of eight hours per day, nor for work on Saturdays, Sundays, holidays or regular days of rest, other than the required overtime for over 40 hours per week; provided, however, nothing shall relieve an employer of any obligation he or she may have assumed by contract or of any obligation imposed by other State or Federal law limiting overtime hours of work or to pay premium rates for work which are in excess of the minimum required by this chapter.

Amended by R.1995 d.553, effective October 16, 1995.

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.

SUBCHAPTER 7. EXEMPTIONS FROM OVERTIME

12:56-7.1 Definition of executive

(a) "Executive" means any employee:

1. Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and

2. Who customarily and regularly directs the work of two or more other employees therein; and

3. Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion of any other change of status of other employees will be given particular weight; and

4. Who customarily and regularly exercises discretionary powers; and

5. Who devotes less than 20 percent of his or her workweek to non-exempt work or less than 40 percent if employed by a retail or service establishment, provided that in either case he or she retains his or her role as manager and supervises two or more full time employees; and

6. Who is compensated for his or her services on a salary basis exclusive of gratuities, board, lodging or other facilities, at a rate of not less than \$300.00 per week effective November 5, 1990, \$350.00 per week effective April 1, 1991, and \$400.00 per week effective April 1, 1992.

(b) "Executive" shall also include employees owning a bona fide equity in the enterprise of 20 percent or more.

(c) "Executive" shall not include employees training to become executives and not actually performing the duties of an executive.

Emergency Amendment, R.1980 d.506, effective November 20, 1980.
See: 13 N.J.R. 37(a).

(a)6: \$250.00 was \$350.00; November 20 was November 1.

Amended by R.1990 d.520, effective November 5, 1990.

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

In (a)5: revised text to specify definition of executive employee; added text with supervision responsibilities.

In (a)6: revised dates and amounts of salary rates.

Petition for Rulemaking: repeal (a)6.

See: 24 N.J.R. 1827(a), 24 N.J.R. 2471(a).

12:56-7.2 Definition of administrative

(a) "Administrative" means any employee:

1. Whose primary duty consists of the performance of office or non-manual work directly related to management policies or general internal business operations; and

2. Who customarily and regularly exercises discretion and independent judgment; and

3. Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity; or who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or who executes under only general supervision special assignments and tasks; and

4. Who devotes less than 20 percent of his or her work to nonexempt work or less than 40 percent if employed by a retail or service establishment; and

5. Who is compensated for his or her services on a salary or fee basis, exclusive of gratuities, board, lodging or other facilities at a rate of not less than \$300.00 per week effective November 5, 1990, \$350.00 per week effective April 1, 1991 and \$400.00 per week effective April 1, 1992.

(b) "Administrative" shall also include an employee whose primary duty consists of sales activity and who re-

ceives at least 50 percent of his or her total compensation from commissions and a total compensation of not less than \$300.00 per week effective November 5, 1990, \$350.00 per week effective April 1, 1991 and \$400.00 per week effective April 1, 1992.

Amended by R.1982 d.468, effective January 3, 1983.

See: 14 N.J.R. 1145(a), 15 N.J.R. 36(a).

Amended by R.1990 d.520, effective November 5, 1990.

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

In (a)5 and (b): revised and updated amounts and dates in text.

Amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-7.3 Definition of professional

(a) "Professional" means any employee:

1. Whose primary duty consists of the performance of work:

i. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

ii. Which original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the employee; and

2. Whose work requires the consistent exercise of discretion and judgment in its performance; and

3. Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized to a given period of time; and

4. Who devotes less than 20 percent of his or her workweek to nonexempt work; and

5. Who is compensated for his or her services on a salary or fee basis, exclusive of gratuities, board, lodging or other facilities at a rate of not less than \$300.00 per week effective November 5, 1990, \$350.00 per week effective April 1, 1991 and \$400.00 per week effective April 1, 1992.

Amended by R.1990 d.520, effective November 5, 1990.

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

In (a)5: revised amounts and both current and future dates.

Case Notes

Former N.J.A.C. 12:56-4.3, read in pari materia with N.J.A.C. 13:36, supports defendant-employer's claim of good faith reliance on an interpretation of the Wage and Hour Law that morticians were professional. *State v. Frech Funeral Home*, 185 N.J.Super. 385, 448 A.2d 1037 (Law Div.1982).

12:56-7.4 Definition of outside sales person

(a) "Outside sales person" means any employee:

1. Who is employed for the purpose of and who is customarily and regularly engaged away from his or her employer's place or places of business in:

i. Making sales; or

ii. Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

2. Whose hours of work of a nature other than that described in (a)1 above do not exceed 20 percent of hours worked in the workweek; provided, that work performed incidental to and in conjunction with the outside sales person's own personal sales or solicitations, including incidental deliveries and collection, shall be regarded as exempt work. Employees who basically drive vehicles and who only incidentally or occasionally make sales shall not qualify for this exemption.

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.

Amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

Case Notes

Taxi drivers are not outside salesmen, nor is a taxicab company a "common carrier by motor bus" so as to be exempt from the Wage and Hour Law. *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).

12:56-7.5 Outside service employees

Employees who are dispatched to perform a service and solicit performance of an additional service shall not qualify for this exemption.

New Rule, R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-7.6 Employees exempt from overtime

Employees employed in a bonafide executive, administrative or professional capacity and outside sales persons shall be exempt from the overtime requirements of N.J.A.C. 12:56-6.1.

Recodified from 12:56-7.5 and amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

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.

(b) "Gratuity" means cash received by an employee for services rendered for an employer or customer of an employer.

12:56-8.2 Gratuity splitting

Where employees practice gratuity splitting (for example, where food servers pay a portion of the gratuities received by them to food clearers), each employee shall have included in wages only the applicable proportionate share.

12:56-8.3 Determining cash gratuities

(a) In determining the cash gratuities actually received by an employee, the following methods shall be evidentiary value:

1. Statements, including United States Treasury Department, Internal Revenue Service, "Employee's Report on Tips", that are furnished by an employee to an employer;
2. Amounts indicated on customer billing, credit card invoices or other customer charge accounts wherein there is an indicated service charge or gratuity designated for the employee and payable to the employee.

Amended by R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-8.4 Administrative handling of gratuities

(a) Provided there is an agreement in advance with the employees, the employer, in order to facilitate the administrative handling of gratuity allowances, may establish an average value of gratuities received by an employee based upon a percentage of gross sales apportioned on basis of hours worked among the employees being tipped. This portion shall be:

1. Derived from a representative sampling of the sources indicated in N.J.A.C. 12:56-8.3; or
2. Ten percent; or
3. Such other method as may be agreed upon subject to the approval of the Commissioner.

(b) Gratuities shall be the property of the tipped employee. Gratuities shall be restored to the tipped employee except when gratuities are pooled, voluntarily by the employees or as a policy of management.

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

In (a)3: deleted text that referred to "the assistant director or his authorized representative."

12:56-8.5 Additional cash contribution claim

In no event shall N.J.A.C. 12:56-6.4 and 6.5 be interpreted to deny to an employee the right to make claim for additional cash compensation where it is shown to the satisfaction of the Commissioner that the actual amount of tips received was less than the amount determined by the employer.

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

Deleted text that referred to "the assistant director, or his authorized representative."

12:56-8.6 Fair value computed

(a) Except whenever any determination made by regulation is applicable, the fair value to the employer of furnishing the employee with food and lodging is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance for interest on the depreciated amount of capital invested by the employer.

(b) The fair value so computed shall not exceed the rental value of comparable facilities in the State.

(c) The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be arrived at in accordance with generally accepted accounting practices.

(d) Generally accepted accounting practices shall not include those rejected by the New Jersey Division of Taxation or the Federal Internal Revenue Service for tax purposes, and the term "depreciation" includes obsolescence.

(e) Items found to be primarily for the benefit of the employer shall not be included in the cost.

(f) Lodging furnished which is in violation of any Federal, State, or local law, ordinance or prohibition shall be valued at nothing.

(g) When a fair market value does not exist for rental of the lodging in the competitive open market, the fair market value shall be zero.

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

In (c) and (d): added "generally accepted" to define accounting practices.

Amended by R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

Added (g).

12:56-8.7 Inspection of fair value methods

Methods of determining fair value shall be subject to inspection and approval by the Commissioner.

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

Deleted text that referred to "the assistant commissioner, or his authorized representative."

12:56-8.8 Method of determining "fair value"

The following is an example of a method of determining fair value:

Employer "A" has three employees who are furnished food and lodging in addition to gross cash wages of \$2.50 per hour. The cost of food purchased for the employees is \$72.00 total a week. The building housing the employees cost \$36,000 in 1978 and subsequent improvements amounted to \$4,000. Maintenance costs for the year were \$2,480. The estimated life of the building when constructed was 50 years. The building can adequately house six persons.

The "fair value" of food for the week is determined as follows:

Total cost	\$ 72.00
"Fair value" per employee (\$72.00 divided by 3)	24.00

The "fair value" of lodging for year 1979 is determined as follows:

Cost of building in 1978	\$36,000.00
Add: Subsequent improvements	4,000.00
Total cost	\$40,000.00

Depreciation for year (1/50 times \$40,000.00)	\$ 800.00
Maintenance costs for year	2,480.00

Interest on employer's net investment:

Total investment	\$40,000.00
Depreciation to date	800.00
Net investment	\$39,200.00

Six percent of net investment	\$ 2,352.00
Total for year	\$ 5,632.00

Total for week (\$5,632.00 divided by 52)	\$ 108.31
"Fair value" per employee (\$108.31 divided by 6 persons)	\$ 18.05

Assume that employee B worked 40 hours in a particular week. His wages would be as follows:

Gross cash wages (40 times \$2.50)	\$ 100.00
Fair value of food	24.00
Fair value of lodging	18.00
Gross weekly wage	\$ 142.05
Hourly wage (\$142.05 divided by 40)	3.55

Assume that employee B worked 48 hours in a particular week. His wage entitlement would be as follows:

Total earnings exclusive of overtime premium pay:	
Gross cash wages (48 hrs. times \$2.50)	\$120.00
Fair value of food	24.00
Fair value of lodging	18.05
Total straight time wages	\$ 162.05

Overtime wages:

Regular hourly wage (162.05 divided by 48 hours)	
Overtime pay 8 × \$3.38 divided by 2)	\$ 13.52

Employee B Wage entitlement for 48 hours	\$ 175.57
--	-----------

12:56-8.9 (Reserved)

Repealed by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

Section was "Cash wage guarantee in food service occupations".

SUBCHAPTER 9. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

12:56-9.1 Definitions

(a) "Individual with disability" means an individual whose earning capacity is impaired by a physical or mental disability and who is being served or eligible to be served in accordance with the recognized rehabilitation program of a sheltered workshop, education institution, or other program of rehabilitation approved by the commissioner.

(b) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency or injury, and to provide such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

Amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-9.2 Application for permit

(a) Application for a special permit shall be filed on properly executed prescribed forms with the Office of Wage and Hour Compliance. Special permit means authorization to employ individuals with disabilities at wages less than minimum wage rates for such period of time fixed and stated in the authorization.

(b) A blanket special permit may be issued for an entire sheltered workshop or a department of a sheltered workshop.

Amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-9.3 Criteria for permit

(a) The following criteria may be considered in determining the necessity of issuing a special permit:

1. The present and previous earnings of disabled employees;
2. The nature and extent of the disability;
3. The wages of employees who are not disabled engaged in comparable work;
4. The types and duration of rehabilitative services;
5. The extent to which individuals with disabilities share, through wages, in the receipts for work done;
6. The extent to which the disabled employees are learners;
7. Whether there exists any employer arrangement with customers or subcontractors which appears to be an unfair method of competition which tends to spread or perpetuate substandard wage levels; and
8. The productivity of the disabled employee.

Amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-9.4 Compliance

(a) All terms and conditions shall be complied with under which a special permit is granted.

(b) No individual who is not an individual with a disability shall be employed under a special permit at wages lower than the minimum required by the act.

Amended by R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-9.5 Cancellation of permit

(a) The Commissioner may cancel any special permit for cause.

(b) A special permit may be canceled as of the date of issuance upon the following conditions:

1. If it is found that fraud has been exercised in obtaining the special permit or in permitting an individual with a disability to work thereunder; or
2. As of the date of the violation, if it is found that any of the provisions of the act, or of the terms of the special permit have been violated; or
3. As of the date of notice of cancellation, if in the judgment of the Commissioner, the special permit is no longer necessary in the interest of the employees covered.

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

In (b)3: deleted text that referred to "the assistant director, or his authorized representative."

Amended by R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

SUBCHAPTER 10. (RESERVED)

SUBCHAPTER 11. EMPLOYMENT IN THE FIRST PROCESSING OF FARM PRODUCTS OCCUPATIONS

12:56-11.1 Definitions

(a) "First processing of farm products occupations" means any activity as an employee in an establishment which is in an industry engaged primarily in the first processing of farm products during seasonal operations.

(b) "Industry engaged primarily in the first processing of farm products" means an establishment which is primarily engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables for human consumption, during seasonal operations.

12:56-11.2 Minimum wage

All employees including those under the age of 18 engaged in first processing of farm products occupations shall

be paid at minimum wage rates as provided in N.J.A.C. 12:56-3.1.

12:56-11.3 Overtime rates

(a) Overtime at $1\frac{1}{2}$ times the regular hourly rate shall be paid for all hours worked in excess of 40 in a week, except during the following periods:

1. For 10 weeks, $1\frac{1}{2}$ times the regular hourly rate shall be paid for all hours worked in excess of 48 in a week and all hours worked in excess of 10 in a day.
2. For 10 weeks, $1\frac{1}{2}$ times the regular hourly wage rate shall be paid for all hours worked in excess of 50 in a week and all hours worked in excess of 10 in a day.
3. The weeks in which these modifications are applicable shall be determined by the employer and records kept to indicate exempt weeks. Overtime provisions shall not include any persons employed in a bona fide executive, administrative or professional capacity.

SUBCHAPTER 12. EMPLOYMENT IN SEASONAL AMUSEMENT OCCUPATIONS

12:56-12.1 Definitions

(a) "Seasonal amusement occupation":

1. Means any activity as an employee in an establishment which is exclusively an amusement or recreational establishment, provided:

- i. It does not operate for more than seven months in any calendar year; or
- ii. During the preceding calendar year, its average receipts for any consecutive six months of such year were not more than $33\frac{1}{3}$ percent of its average receipts for the other six months of that year.

2. "Seasonal amusement occupation" includes but is not limited to amusement rides and amusement device operators, cashiers who sell tickets for the rides and device, and operators of game concessions.

3. "Seasonal amusement occupation" does not include retail, eating or drinking concessions; nor does it pertain to camps, beach and swimming facilities, movie theatres, theatrical productions, athletic events, professional entertainment, pool and billiard parlors, circuses and outdoor shows, sport activities or centers, country club athletic facilities, bowling alleys, race tracks and like facilities which are not part of a diversified amusement enterprise.

12:56-12.2 Minimum wage

Employees engaged in seasonal amusement occupations shall be paid at minimum wage rates as provided in N.J.A.C. 12:56-3.1.

Amended by R.1990 d.520, effective November 5, 1990.

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

Deleted "overtime rates" from section title.

12:56-12.3 Overtime rates

Employees engaged in seasonal amusement occupations shall be exempt from the overtime provisions of the act.

SUBCHAPTER 13. EMPLOYMENT IN HOTEL AND MOTEL OCCUPATIONS

12:56-13.1 Definitions

(a) "Hotel and motel occupation" means any activity as an employee for an establishment kept, used, maintained, advertised as or held out to be a place where sleeping accommodations are supplied for pay to transient or permanent guests, in which 15 or more rooms are available for rental furnished or unfurnished; except this definition shall not include summer camps and country clubs when these activities are not part of a hotel or motel establishment.

(b) "Seasonal hotel and motel" means a hotel or motel in which, during the previous business year, not less than two-thirds of the gross receipts were received in a continuous period of three months or less.

12:56-13.2 Minimum wage

Employees including those under 18 years of age engaged in hotel and motel occupations shall be paid a minimum wage rate as provided in N.J.A.C. 12:56-3.1.

12:56-13.3 Overtime rates

Overtime at 1-1/2 times the regular hourly wage rate shall be paid for all hours worked in excess of 40 hours in any week.

Recodified from 12:56-13.6 by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-13.4 Cash wage standard

(a) The wage rates established in this subchapter shall be acceptable in those occupations where gratuities or food and/or lodging are actually received.

(b) Employers subject to the Fair Labor Standards Act must pay the Federal cash wage rate of \$2.13 and must demonstrate that the balance of the \$5.05 minimum wage required under State law is paid through gratuities in accordance with N.J.A.C. 12:56-4 and 12:56-8. Employers not subject to the Fair Labor Standards Act must demonstrate that the total wage, including cash and gratuities, equals the \$5.05 minimum wage required under State law in accordance with N.J.A.C. 12:56-4 and 12:56-8.

Amended by R.1990 d.520, effective November 5, 1990.

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

In (b): deleted text referring to "the assistant director or his authorized representative."

Recodified from 12:56-13.7 and amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-13.5 Substantiation of gratuities; food and lodging cost

Employer substantiation of gratuities received by an employee and the cost of food and lodging shall be as provided in this chapter.

Amended by R.1990 d.520, effective November 5, 1990.

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

Deleted subsection (b) for clarification.

Recodified from 12:56-13.8 by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-13.6 Food and lodging as wages over 40 hours

Food and lodging supplied to employees shall not be included in wages for those hours worked in excess of 40 hours per week.

Recodified from 12:56-13.9 by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-13.7 Cash wage condition of employment

Where cash wages have been established as a condition of employment through agreement between the employer and employee, gratuities, food and lodging shall not be included as part of such cash wages.

Recodified from 12:56-13.10 by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-13.8 Required food and lodging acceptance; costs

Meals and lodging which the employer requires the employee to accept shall be considered for the convenience of the employer and the cost thereof shall not be considered applicable as minimum wages.

Recodified from 12:56-13.11 by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

SUBCHAPTER 14. EMPLOYMENT IN FOOD SERVICE OCCUPATIONS

12:56-14.1 Definitions

(a) "Restaurant industry" means any eating or drinking place which prepares and offers food or beverages for human consumption either in any of its premises or by such services as catering, banquets, box lunch or curb service.

(b) "Restaurant occupation" means any activity of any employee in the restaurant industry.

(c) "Uniform" means any garment such as dress, apron, collar, cuffs or headdress which is worn by the employee either at the direction of the employer or as a condition of employment.

12:56-14.2 Minimum wage

Employees including those under 18 years of age employed at restaurant occupations shall be paid a minimum wage rate as provided in N.J.A.C. 12:56-3.1.

12:56-14.3 Overtime rates

(a) Overtime at 1½ times the regular hourly wage shall be paid for all hours worked in excess of 40 hours in any week.

1. The minimum overtime rate for those covered by the overtime provision is \$5.70 on May 3, 1990, \$6.38 on April 1, 1991, and \$7.58 on April 1, 1992.

2. If the employee's regular hourly wage rate is more than the minimum per hour, then the overtime rate is 1-1/2 times the employee's regular rate.

3. Food and lodging supplied to employees shall not be included in wages for those hours worked in excess of 40 hours per week. Gratuities shall not be counted toward the premium part of the overtime. The additional halftime must be in cash.

Amended by R.1990 d.520, effective November 5, 1990.

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

In (a)1: added new amounts and years.

Recodified from 12:56-14.4 by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

Former 12:56-14.3, "Occupational wages where gratuities are customary", repealed.

12:56-14.4 Cash wage standard

(a) The wage rate established in this subchapter shall be acceptable in those occupations where gratuities or food and/or lodging are actually received.

(b) Employers subject to the Fair Labor Standards Act must pay the Federal cash wage rate of \$2.13 and must demonstrate that the balance of the \$5.05 minimum wage required under State law is paid through gratuities in accordance with N.J.A.C. 12:56-4 and 12:56-8. Employers not subject to the Fair Labor Standards Act must demonstrate that the total wage, including cash and gratuities, equals the \$5.05 minimum wage required under State law in accordance with N.J.A.C. 12:56-4 and 12:56-8.

Recodified from 12:56-14.5 and amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-14.5 Substantiation of gratuities, food and lodging cost

Employer substantiation of gratuities received by an employee and the cost of food and lodging shall be as provided in this chapter.

Recodified from 12:56-14.6 by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-14.6 Food and lodging as wages over 40 hours

Food and lodging supplied to employees shall not be included in wages for those hours worked in excess of 40 hours per week.

Recodified from 12:56-14.7 by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-14.7 Cash wage condition of employment

Where cash wages have been established as a condition of employment through agreement between the employer and the employee or the employee's collective bargaining agent, gratuities, food and lodging shall not be included as part of such cash wages.

Recodified from 12:56-14.8 by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-14.8 Meals and lodging applicable to minimum wage

Meals and lodging shall be considered applicable toward the minimum wage unless the employee elects not to receive such meals and lodging.

Recodified from 12:56-14.9 by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

SUBCHAPTER 15. EMPLOYMENT IN AIR CARRIER INDUSTRY

12:56-15.1 Definitions

(a) "Air carrier employee" means an employee, non-union or union, where applicable labor agreements permit, who operates in a phase of air carrier employment which operates on a seven day a week, 24 hour-a-day basis and whose normal work is scheduled on a seven day a week, 24 hour-a-day basis.

(b) "Air carrier employer" means an air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to Section 401 of the Federal Aviation Act of 1958, 49 USC Section 1371.

12:56-15.2 Minimum wage

Employees engaged in the air carrier industry shall be paid a minimum wage rate as provided in N.J.A.C. 12:56-3.1.

12:56-15.3 Overtime rates

(a) Overtime shall be paid at 1½ times the regular hourly wage rate to all nonexempt employees for all hours worked in excess of 40 hours in a week except rescheduled time off for overtime shall be permitted to air carrier employees where:

1. The employee so requests;
2. The employer determines that the workload demands permit the employee's absence; or
3. The rescheduled time off is taken within specified periods.

SUBCHAPTER 16. INDEPENDENT CONTRACTOR STATUS
12:56-16.1 Independent contractor status criteria

The criteria identified in the Unemployment Compensation Law at N.J.S.A. 43:21-19(i)(6)(A)(B)(C) and interpreting case law will be used to determine whether an individual is an employee or independent contractor for purposes of the Wage and Hour Law.

New Rule, R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

SUBCHAPTER 17. UNIFORMS
12:56-17.1 Uniforms

(a) It shall be a presumption that the employer has required his or her employees to wear uniforms if such garments are of a similar design, color or material, or form part of the decorative pattern of the establishment.

(b) Maintenance and upkeep of uniforms of kitchen people, cooks, and dishwashers shall be provided and maintained by the employer.

(c) If uniforms are required which are not appropriate for street wear or use in other establishments, the employer shall pay for the cost of such uniforms.

(d) If a particular type of clothing is required to be worn, which is appropriate for street wear, the employer who requires an employee to furnish more than one style, type or color of clothing during any one year of his or her employment shall pay to each such employee, in addition to his or her regular wages otherwise due, the amount which employee is required to pay for newly required uniform or uniforms and such additional payment shall be made to the employee in the week in which the change is required.

(e) No deduction from the pay of employees for uniforms shall be permitted. If the employee pays for uniforms in cash and the cash payment brings the employee below the minimum wage, the employer shall make up the difference for the minimum wage for that week.

Recodified from N.J.A.C. 12:56-14.10 by R.1990 d.520, effective November 5, 1990.

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

Amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

SUBCHAPTER 18. SCHOOL-TO-WORK PROGRAM
12:56-18.1 Definitions

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

“Career awareness and exploration” means structured school programs that enable student learners to:

1. Develop awareness of the many employment opportunities available;
2. Develop awareness of the relevant factors to be considered in making career decisions;
3. Become familiar with occupational clusters and classifications;
4. Explore key occupational areas and assess their own interests and abilities; and
5. Develop tentative occupational plans and arrive at a tentative career choice.

“Incidental” means any irrelevant, occasional productive work which is not part of achieving learning objectives.

“Internship” means a program of study for a student which includes supervised practical training.

“Job shadowing” means the process by which a student learner determines (by observation, interview and study) the pertinent information related to an occupation. Information can include such factors as: qualifications for employment, functions performed, necessary skills and knowledge, equipment and material used, and physical demands and working environment.

New Rule, R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-18.2 School-to-work program requirements

(a) The following conditions shall be met to allow for non-paid activities of student learners at for profit and not-for-profit organizations:

1. The student shall be at least 16 years of age;
2. The activity must be related to a formal school-to-work transition plan for a student learner;
3. There is collaboration and planning between work-site staff and school staff resulting in clearly identified learning objectives related to the non-paid activities;
4. Any productive work is incidental to achieving learning objectives;
5. The student learner receives credit for time spent at the worksite and the student is expected to achieve the learning objectives;
6. The student learner is supervised by a school official and a workplace mentor;
7. The non-paid activity is of a limited duration, related to an educational purpose and there is no guarantee or expectation that the activity will result in employment; and

8. The student learner does not replace an employee.

New Rule, R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

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
Division of Workplace Standards
John Fitch Plaza
Trenton, New Jersey

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

Office of Wage and Hour Compliance
New Jersey Department of Labor
CN 389
Trenton, New Jersey 08625

Amended by R.1990 d.520, effective November 5, 1990.
See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b).
Revised and updated addresses.