

CHAPTER 56**WAGE AND HOUR****Authority**

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

Source and Effective Date

R.2000 d.423, effective September 22, 2000.
See: 32 N.J.R. 2643(a), 32 N.J.R. 3855(a).

Executive Order No. 66(1978) Expiration Date

Chapter 56, Wage and Hour, expires on September 22, 2005.

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Chapter 56, New Jersey State Wage and Hour Law, was repealed and Chapter 56, Wage and Hour, was adopted as new rules by R.1980 d.430, effective November 1, 1980.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Subchapter 10, Employment of Learners, Apprentices and Students, was repealed and Subchapter 10, Employment of Learners; Sub-Minimum Wage, was adopted as new rules by R.1992 d.328, effective August 17, 1992.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as R.1995 d.553, effective September 22, 1995, and Subchapter 10, Employment of Learners; Sub-Minimum Wage, was repealed and Subchapter 18, School-to-Work Program, was adopted as new rules by R.1995 d.553, effective October 16, 1995.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: Source and Effective Date. See, also, section annotations.

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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 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).

Administrative correction.

See: 27 N.J.R. 4728(b).

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 Division 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).
Amended by R.2000 d.423, effective October 16, 2000.
See: 32 N.J.R. 2643(a), 32 N.J.R. 3855(a).

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: