

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 Chapter 56 was repealed and new Wage and Hour rules were adopted as R.1980 d.430, effective November 1, 1980.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specifically 34:11-56(a)17, Subchapter 10, originally Employment of Learners, Apprentices and Students, was repealed and new rules, Employment of Learners; Sub-Minimum Wage, were adopted as R.1992 d.328, effective August 17, 1992.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 As part of the readoption, Subchapter 10, Employment of Learners; Sub-Minimum Wage, was repealed, and Subchapter 18, School-to-Work Program, was adopted as new rules, effective October 16, 1995. See: Source and Effective Date. See, also, section annotations.

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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 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.

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).

SUBCHAPTER 19. EMPLOYMENT IN THE TRUCKING INDUSTRY

Authority

N.J.S.A. 34:11-56a1 et seq., specifically 34:11-56a16.

Source and Effective Date

R.1996 d.375, effective August 5, 1996.
See: 28 N.J.R. 1475(a), 28 N.J.R. 3798(c).

12:56-19.1 Trucking industry employer defined

“Trucking industry employer” means any business or establishment primarily operating for the purpose of conveying property from one place to another by road or highway, and includes the storage and warehousing of goods and property. Such an employer must also be subject to the jurisdiction of the Secretary of Transportation pursuant to the Federal Motor Carrier Act, 49 U.S.C. § 31501 et seq., whose employees are exempt under Section 13(b)(1) of the Fair Labor Standards Act, 29 U.S.C. § 213(b)(1), which provides an exemption to employees regulated by Section 204 of the Federal Motor Carrier Act and Interstate Commerce Act.

12:56-19.2 Minimum wage

Employees engaged in the trucking industry shall be paid a minimum wage rate as provided in N.J.S.A. 34:11-56a4 and N.J.A.C. 12:56-3.1.

12:56-19.3 Overtime rates

Every trucking industry employer shall pay to all drivers, helpers, loaders and mechanics for whom the Secretary of Transportation may prescribe maximum hours of work for the safe operation of vehicles pursuant to 49 U.S.C. § 31502(b) an overtime rate not less than one and one-half times the minimum wage required pursuant to N.J.S.A. 34:11-56a4 and N.J.A.C. 12:56-3.1.

SUBCHAPTER 20. EMPLOYMENT OF MECHANICS IN NEW OR NEW AND USED MOTOR VEHICLE DEALERSHIPS

Authority

N.J.S.A. 34:11-56a1 et seq., specifically 34:11-56a16.

Source and Effective Date

R.1996 d.376, effective August 5, 1996.
See: 28 N.J.R. 1476(a), 28 N.J.R. 3800(a).

12:56-20.1 Skilled mechanic defined

(a) For purposes of this exemption, “skilled mechanic” is defined as:

1. A mechanic who is a specialist performing all repairs and who works on the total automobile and who works on various automobile makes and models; or
2. A mechanic who is responsible for work on certain parts of the vehicle, for example, transmission mechanic, brake mechanic, engine mechanic, air-conditioning mechanic.

(b) The term “skilled mechanic” does not include: a mechanic or helper who works on limited sections of an automobile and performs minor tasks such as lubricating, tire changing, brake service, oil changing.

12:56-20.2 Minimum wage

Skilled mechanics engaged in the new or the new and used motor vehicle sales industry must be paid a minimum wage rate as provided in N.J.A.C. 12:56-3.1.

12:56-20.3 Overtime rates

(a) Skilled mechanics employed by non-manufacturing employers primarily engaged in the business of selling new or new and used motor vehicles shall be exempt from the overtime requirements of N.J.S.A. 34:11-56a4 and N.J.A.C. 12:56-6.1 provided all of the following conditions are met:

1. The mechanic shall be paid on a flat rate or incentive rate basis; and

2. The mechanic shall be guaranteed a basic contractual hourly rate, separate from and exclusive from the flat or incentive rate. The contractual hourly rate must include payment of time and one-half of the hourly rate for all hours actually worked in excess of 40 hours per week. The contractual hourly rate must be at least minimum wage.

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.