

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).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 56, Wage and Hour, expires on March 21, 2006. See: 37 N.J.R. 4170(a).

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Chapter 56, New Jersey State Wage and Hour Law, was repealed and Chapter 56, Wage and Hour, was adopted as new rules by R.1980 d.430, effective November 1, 1980.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Subchapter 10, Employment of Learners, Apprentices and Students, was repealed and Subchapter 10, Employment of Learners; Sub-Minimum Wage, was adopted as new rules by R.1992 d.328, effective August 17, 1992.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as R.1995 d.553, effective September 22, 1995, and Subchapter 10, Employment of Learners; Sub-Minimum Wage, was repealed and Subchapter 18, School-to-Work Program, was adopted as new rules by R.1995 d.553, effective October 16, 1995.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

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 Interest
- 12:56-1.6 Hearings
- 12:56-1.7 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

SUBCHAPTER 19. EMPLOYMENT IN THE TRUCKING
INDUSTRY

- 12:56-19.1 Trucking industry employer defined
- 12:56-19.2 Minimum wage
- 12:56-19.3 Overtime rates

SUBCHAPTER 20. EMPLOYMENT OF SKILLED
MECHANICS

- 12:56-20.1 Skilled mechanic defined
- 12:56-20.2 Minimum wage

12:56-20.3 Overtime rates

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 noncompliance, 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 Interest

(a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:

1. When an employer has unreasonably delayed compliance with an order of the Commissioner to pay wages owed to an employee;

2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the employer over an extensive period of time; or

3. Where the Commissioner finds sufficient cause based on the particular case.

(b) Where applicable, interest deemed owed to an employee shall be calculated at the annual rate as set forth in New Jersey Court Rules, 4:42-11.

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).
New Rule, R.2001 d.278, effective August 6, 2001.
See: 33 N.J.R. 1850(a), 33 N.J.R. 2676(a).

Former N.J.A.C. 12:56-1.5, Hearings, recodified to N.J.A.C. 12:56-1.6.

12:56-1.6 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).
Recodified from N.J.A.C. 12:56-1.5 by R.2001 d.278, effective August 6, 2001.
See: 33 N.J.R. 1850(a), 33 N.J.R. 2676(a).

Former N.J.A.C. 12:56-1.6, Discharge or discrimination against employee making complaint, recodified to N.J.A.C. 12:56-1.7.

12:56-1.7 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).

Recodified from N.J.A.C. 12:56-1.6 by R.2001 d.278, effective August 6, 2001.

See: 33 N.J.R. 1850(a), 33 N.J.R. 2676(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.

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

“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.

“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, eleemosynary, 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".

Amended by R.2000 d.423, effective October 16, 2000.

See: 32 N.J.R. 2643(a), 32 N.J.R. 3855(a).

Inserted "Division of Wage and Hour Compliance"; and deleted "Office of Wage and Hour Compliance".

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

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

Amended by R.2000 d.423, effective October 16, 2000.

See: 32 N.J.R. 2643(a), 32 N.J.R. 3855(a).

Inserted "total" preceding "hours worked each day".

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 the minimum hourly wage rate set by section 6(a)(1) of the Federal "Fair Labor Standards Act of 1938" (29 U.S.C. § 206(a)(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)1-3, increased minimum wage for newly adjusted current and future years.

Amended by R.2000 d.423, effective October 16, 2000.

See: 32 N.J.R. 2643(a), 32 N.J.R. 3855(a).

Rewrote the section.

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 total hours worked each day and each workweek, earnings, including the regular hourly wage, gross to net amounts with itemized deductions, and the basis on which wages are paid.

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.

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

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.

Case Notes

New Jersey Commissioner of Labor exceeded his authority in promulgating regulation requiring payment of overtime wages to trucking industry employees at one and one-half times the minimum wage, rather than at one and one-half times their regular wage. *Keeley v. Loomis Fargo & Co.*, 183 F.3d 257 (3rd Cir.N.J. 1999).

SUBCHAPTER 20. EMPLOYMENT OF SKILLED MECHANICS

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 or the automotive and/or truck repair industry must be paid a minimum wage rate as provided in N.J.A.C. 12:56-3.1.

Amended by R.1998 d.405, effective August 3, 1998.
See: 30 N.J.R. 1893(a), 30 N.J.R. 2928(b).

Inserted a reference to the automotive and/or truck repair industry.

12:56-20.3 Overtime rates

(a) Skilled mechanics employed by nonmanufacturing employers primarily engaged in the business of selling new or new and used motor vehicles or in the business of automotive and/or truck repair 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.

Amended by R.1998 d.405, effective August 3, 1998.
See: 30 N.J.R. 1893(a), 30 N.J.R. 2928(b).

In (a), inserted a reference to the business of automotive and/or truck repair.

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
Labor Standards and Safety Enforcement
John Fitch Plaza
Trenton, New Jersey

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

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

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