

CHAPTER 35

WORK FIRST NEW JERSEY/GENERAL ASSISTANCE PROGRAM

Authority

N.J.S.A. 34:1-20, 34:1A-3(e) and 44:8-114.

Source and Effective Date

R.1995 d.363, effective June 12, 1995.
See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).

Executive Order No. 66(1978) Expiration Date

Chapter 35, Work First New Jersey/General Assistance Program, expires on June 12, 2000.

Chapter Historical Note

Chapter 35, Workfare, became effective May 1, 1980 as R.1980 d.162. See: 12 N.J.R. 128(b), 12 N.J.R. 280(b). Pursuant to Executive Order No. 66(1978), Subchapters 1, 2, 3 and 4 expired May 1, 1985. Subchapters 1, 2, 3 and 4 were readopted as new rules and Subchapter 5 was adopted as new rules as R.1985 d.404, effective August 5, 1985. See: 17 N.J.R. 1048(a), 17 N.J.R. 1896(a). Pursuant to Executive Order No. 66(1978), Chapter 35 was readopted as R.1990 d.396, effective July 16, 1990. See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a). Chapter 35 was readopted as R.1995 d.363, effective June 12, 1995. See: Source and Effective Date. See, also, section annotations. The name of Chapter 35, Workfare, was changed by emergency amendment to Work First New Jersey/General Assistance Program, by R.1997 d.310, effective June 30, 1997 (to expire August 29, 1997). See: 29 N.J.R. 3361(a). The provisions of R.1997 d.310 were readopted as R.1997 d.401, effective August 28, 1997. See: 29 N.J.R. 4287(c).

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SUBCHAPTER 1. GENERAL PROVISIONS

12:35-1.1 Purpose and scope

(a) These rules establish procedures to resolve complaints concerning the placement or use of Work First New Jersey (Work First) and the Food Stamp Employment and Training Program (FSETP) participants in the Community Work

Experience Program (CWEP) and Alternative Work Experience Program (AWEP) at nonprofit, public and other workplaces.

(b) These rules apply to regular employees who believe they have been adversely affected by the placement or use of Work First New Jersey or Food Stamp Employment and Training Program (FSETP) participants at their worksite. The rules also apply to nonprofit, public and other workplaces at which the work activity is performed and to government agencies responsible for reviewing these complaints.

Repeal and New Rule, R.1990 d.396, effective August 6, 1990.
See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).
Emergency amendment R.1997 d.310, effective June 30, 1997 (to expire August 29, 1997).
See: 29 N.J.R. 3361(a).

In (a), inserted reference to new name of program and substituted "workplace" for "worksite"; inserted new (b); recodified former (b) to (c); and in (c), amended to whom rules applicable.
Adopted concurrent proposal, R.1997 d.401, effective August 28, 1997.
See: 29 N.J.R. 3361(a), 29 N.J.R. 4287(c).
Amended by R.1998 d.65, effective January 20, 1998.
See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).
Deleted (a); and recodified former (b) and (c) as (a) and (b).

12:35-1.2 Definitions

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

"Food Stamp Employment and Training Program or FSETP" means the program established by the New Jersey Department of Human Services pursuant to N.J.S.A. 10:87.

"Work First New Jersey Program or WFNJ" means the program established by the Department of Human Services pursuant to P.L. 1997, c.38.

"Work First/FSETP participant" means a person who participates in the CWEP/AWEP and has been assigned to a nonprofit, public or other workplace under the Work First New Jersey Program or FSETP.

"Workplace" means a nonprofit, public or other workplace to which a Work First/FSETP participant is assigned to work.

New Rule, R.1990, d.396, effective August 6, 1990.
See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).
Recodified to 12:35-1.3.
Section was registration and reporting requirements forms.
Emergency amendment R.1997 d.310, effective June 30, 1997 (to expire August 29, 1997).
See: 29 N.J.R. 3361(a).
Added "Work First New Jersey Program or WFNJ", "Work First/FSETP participant" and "Workplace".
Adopted concurrent proposal, R.1997 d.401, effective August 28, 1997.
See: 29 N.J.R. 3361(a), 29 N.J.R. 4287(c).
Amended by R.1998 d.65, effective January 20, 1998.
See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Added "Food Stamp Employment and Training Program or FSETP"; deleted "Agency", "Employment Service", "GA", "General Assistance Employability Program or Workfare", "Municipal worksite agreements", "Participant", "Recipient", and "Worksite agent"; and amended "Work First/FSETP Participant".

12:35-1.3 (Reserved)

Amended by R.1985 d.404, effective August 5, 1985.

See: 17 N.J.R. 1048(a), 17 N.J.R. 1896(a).

Amended (a); added (b), (c), (d).

Amended by R.1990 d.396, effective August 6, 1990.

See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).

Recodified from 12:35-1.2. Added new (a); redesignated existing (a)-(d) as (b)-(e). In (e), added last sentence.

Amended by R.1995 d.363, effective July 3, 1995.

See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).

In (a) inserted "not specifically exempted by the municipal welfare department from workfare due to participation in the work training requirements of the Family Development Program in accordance with N.J.A.C. 10:86"; deleted (b); and recodified existing (c) to (e) as (b) to (d).

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Section was "Registration and reporting requirements".

12:35-1.4 (Reserved)

Amended by R.1985, d.404, effective August 5, 1985.

See: 17 N.J.R. 1048(a), 17 N.J.R. 1896(a).

Amended (a) and (b); added (c), (d), (e).

Amended by R.1990, d.396, effective August 6, 1990.

See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).

Recodified from 12:35-1.3. Stylistic revisions.

Amended by R.1995 d.363, effective July 3, 1995.

See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).

In (b) added the second sentence.

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Section was "Accident insurance coverage requirements".

12:35-1.5 (Reserved)

Amended by R.1985, d.404, effective August 5, 1985.

See: 17 N.J.R. 1048(a), 17 N.J.R. 1896(a).

Added job title description, hours per month and forwarding copy of notice for evaluation.

Amended by R.1990, d.396, effective August 6, 1990.

See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).

Recodified from 12:35-1.4. In (a), added 1-8; added (b) and (c).

Amended by R.1995 d.363, effective July 3, 1995.

See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).

Rewrote (a) and (b); and deleted (c).

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Section was "Worksite assignments; agreement forms".

12:35-1.6 (Reserved)

Repeal and New Rule, R.1985, d.404, effective August 5, 1985.

See: 17 N.J.R. 1048(a), 17 N.J.R. 1896(a).

Amended by R.1990, d.396, effective August 6, 1990.

See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).

Recodified from 12:35-1.5. Stylistic revisions.

Amended by R.1995 d.363, effective July 3, 1995.

See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).

Following "shall be" deleted "made and".

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Section was "Worksite Assignments; evaluations".

12:35-1.7 (Reserved)

Repeal and New Rule, R.1985, d.404, effective August 6, 1985.

See: 17 N.J.R. 1048(a), 17 N.J.R. 1896(a).

Amended by R.1990, d.396, effective August 6, 1990.

See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).

Recodified from 12:35-1.6. Stylistic revisions.

Amended by R.1995 d.363, effective July 3, 1995.

See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).

Added the second and third sentences.

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Section was "Attendance and worksite activity; monitoring".

SUBCHAPTER 2. PLACEMENT OR USE OF WORK FIRST/FSETP PARTICIPANTS AT WORKPLACE

Subchapter Historical Note

Subchapter 2, Location of Worksite Activity, was repealed by R.1998 d.65, effective January 20, 1998. See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Subchapter 2, Placement or Use of Work First/FSETP Participants at Workplace, was recodified from Subchapter 6, Placement or Use of Work First Participants at Workplace, by R.1998 d.65, effective January 20, 1998. See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

12:35-2.1 Prohibition on replacing or displacing regular employees

(a) A Work First New Jersey recipient who participates in CWEP or AWEP, or a FSETP recipient, shall not be placed or utilized in a position at a nonprofit, public or other workplace:

1. That was previously filled by a regular employee if the position or a substantially similar position at the workplace has been made vacant through a demotion, substantial reduction of hours or a layoff of a regular employee in the previous 12 months, or has been eliminated by the employer at any time during the previous 12 months;
2. In a manner that infringes upon a wage rate or an employment benefit or violates the contractual overtime provisions of a regular employee at the workplace;
3. In a manner that violates an existing collective bargaining agreement or a statutory provision that applies to the workplace;
4. In a manner that supplants or duplicates a position in an existing, approved apprenticeship program;
5. By or through an employment agency or temporary help service firm as a community work experience or alternative work experience worker;

6. If there is a contractual or statutory recall right to that position at that workplace; or
7. If there is an ongoing strike or lockout at that workplace.

12:35-2.2 Complaint procedures: State service employees

(a) Any State employee who believes he or she has been adversely affected by a violation of N.J.A.C. 12:35-2.1, or his or her duly authorized union representative, may file a complaint with the Governor's Office of Employee Relations.

1. The complaint shall be filed and reviewed pursuant to the State contract under which the complainant is covered.
2. The complaint shall be filed within 30 days of either the Work First/FSETP participant's placement or use at the workplace, or the date on which the complainant should reasonably have known of his or her placement or use, or 30 days of when the alleged violation of N.J.A.C. 12:35-2.1 occurred.
3. A copy of the complaint shall be forwarded to the Division of Family Development within the Department of Human Services and to the Division of Workforce New Jersey—Careers, within the Department of Labor.
4. The Governor's Office of Employee Relations shall investigate and render a decision as to the appropriateness of the Work First/FSETP participant's placement or use at the worksite within 30 days of receipt of the complaint.
5. The complainant or his or her duly authorized union representative may appeal the decision of the Governor's Office of Employee Relations within 30 days of receipt of the decision pursuant to the State contract under which the complainant is covered.
6. The Governor's Office of Employee Relations shall set up an arbitration proceeding pursuant to the State contract under which the complainant is covered upon the receipt of the appeal.
7. The arbitrator shall determine whether a violation of N.J.A.C. 12:35-2.1 above has occurred and, if so, shall provide an appropriate legal remedy.
8. The cost of the arbitration shall be shared equally by both parties.

Amended by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

In (a)2, added 30 day period in reference to N.J.A.C. 12:35-2.1.

12:35-2.3 Complaint procedures: Non-State service employees

(a) Any non-State employee who believes he or she has been adversely affected by a violation of N.J.A.C. 12:35-2.1, or his or her duly authorized union representative, may file a complaint with the Regional Manager, Division of Work-

force New Jersey—Careers, within the Department of Labor.

1. The complaint shall be filed within 30 days of either the Work First/FSETP participant's placement or use at the workplace or, the date on which the complainant should reasonably have known of his or her placement or use or 30 days of when the alleged violation of N.J.A.C. 12:35-2.1 occurred.
2. The complaint shall be made in writing and specify the basis for the complaint.
3. Each party shall serve copies of the complaint and any supplemental material submitted on the other party.
4. A copy of the complaint shall be forwarded to the Division of Family Development within the Department of Human Services.
5. A party may review the file at the Regional Office, Division of Workforce New Jersey—Careers, during regular business hours.

(b) The Regional Manager shall investigate the complaint and render a written decision as to the appropriateness of the Work First/FSETP participant's placement or use at the workplace within 10 days of receipt of the complaint.

1. If the Regional Manager determines that the placement or use of the Work First/FSETP participant violates N.J.A.C. 12:35-2.1, he or she shall notify the agency responsible for placement that the placement or use is not appropriate and that the participant should be immediately removed from the position.
2. The Regional Manager's decision shall advise the parties of the right to appeal to the Director, Division of Workforce New Jersey—Careers within the Department of Labor.
3. The Regional Manager shall provide the Director, Division of Workforce New Jersey—Careers, with a copy of his or her decision.

(c) A complainant or his or her duly authorized union representative may appeal the final decision of the Regional Manager to the Director, Division of Workforce New Jersey—Careers within 10 days of receipt of the decision.

1. The complaint shall be in writing and include copies of any materials presented to the Regional Manager and the written decision of the Regional Manager.

(d) The Director, Division of Workforce New Jersey—Careers shall review the written record and render a written decision as to the appropriateness of the placement or use the Work First/FSETP participant at the workplace within 10 days after receipt of the appeal.

1. If the Director, Division of Workforce New Jersey—Careers determines that the placement or use of the Work First recipient violates N.J.A.C. 12:35-2.1, he or she shall notify the agency responsible for placement that the placement or use is not appropriate and that the participant should be immediately removed from the position.

2. The decision shall advise of the right to appeal to the New Jersey State Board of Mediation for expedited binding arbitration.

(e) A complainant or his or her duly authorized union representative may appeal the final decision of the Director, Division of Employment and Training to the Board of Mediation within 10 days of receipt of the decision.

1. Upon receipt of an appeal, the Board of Mediation shall provide expedited binding arbitration in accordance with its rules at N.J.A.C. 12:105.

2. The arbitrator shall determine whether a violation of N.J.A.C. 12:35-6.1 has occurred and, if so, the arbitrator shall provide an appropriate legal remedy.

3. The cost of the arbitration shall be shared equally by both parties.

Amended by R.1998 d.65, effective January 20, 1998.
See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

In (a)1, added 30 day period in reference to N.J.A.C. 12:35-2.1; and in (c), inserted a reference to duly authorized union representatives.

SUBCHAPTER 3. (RESERVED)

Subchapter Historical Note

Subchapter 3, Scheduling Worksite Assignments, was repealed by R.1998 d.65, effective January 20, 1998. See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

SUBCHAPTER 4. (RESERVED)

Subchapter Historical Note

Subchapter 4, Types of Work Allowable Under Worksite Activities, was repealed by R.1998 d.65, effective January 20, 1998. See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

SUBCHAPTER 5. (RESERVED)

Subchapter Historical Note

Subchapter 5, Failure to Comply, was repealed by R.1998 d.65, effective January 20, 1998. See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

SUBCHAPTER 6. (RESERVED)

Subchapter Historical Note

Subchapter 6, Placement or Use of Work First Participants at Worksite, was adopted as Emergency New Rules by R.1997 d.310, effective June 30, 1997 (to expire August 29, 1997). The provisions of R.1997 d.310 were readopted as R.1997 d.401, effective August 28, 1997. See: 29 N.J.R. 3361(a), 29 N.J.R. 4287(c). As part of R.1997 d.401, effective October 6, 1997, Subchapter 6 was renamed Placement or Use of Work First Participants at Workplace. Subchapter 6, Placement or Use of Work First Participants at Workplace, was recodified to Subchapter 2 by R.1998 d.65, effective January 20, 1998. See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

APPENDIX 1

(RESERVED)

Repealed by R.1998 d.65, effective January 20, 1998.
See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Was "General Assistance Employability Program".

APPENDIX 2

(RESERVED)

Repealed by R.1998 d.65, effective January 20, 1998.
See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Was "Individual Worksite Agreement".

APPENDIX 3

(RESERVED)

Repealed by R.1998 d.65, effective January 20, 1998.
See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Was "General Assistance Employability Program Training Worksite Agreement".

APPENDIX 4

(RESERVED)

Repealed by R.1998 d.65, effective January 20, 1998.
See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Was "General Assistance Employability Program Individual Training Worksite Agreement".