



STATE OF NEW JERSEY.

DEPARTMENT OF LABOR AND INDUSTRY,

Division of Labor Relations

NEW JERSEY STATE WAGE and
HOUR LAW and
REGULATIONS.

DO NOT CIRCULATE

Administered by
WAGE AND HOUR BUREAU
DEPARTMENT OF LABOR AND INDUSTRY
P.O. Box V
Trenton, New Jersey 08625

*MS/KAP
L/VII
1/16/62*



MW 242

Chapter 89, Laws of N.J. 1967

Approved 6-2-67

Amending Chapter 113, Laws of N.J. 1966

The provisions of the act to which this act is a supplement in respect to minimum wages and compensation for overtime work shall not be applicable to summer counsellors and allied and special staff personnel who work during the months of June, July, August or September of the year at Children's summer camps operated by any nonprofit corporation or association.

CHAPTER 216, LAWS OF NEW JERSEY 1967

EFFECTIVE OCTOBER 5, 1967

AN ACT to supplement "An act concerning minimum wage standards; providing for the enforcement of such standards and the orders and regulations made with respect thereto; prescribing penalties for the violation thereof, and supplementing Title 34 of the Revised Statutes," approved June 17, 1966 (P.L. 1966, c. 113).

1. No claim for unpaid minimum wages, unpaid overtime compensation, or other damages under this act shall be valid with respect to any such claim which has arisen more than 2 years prior to the commencement of an action for the recovery thereof. In determining when an action is commenced, the actions shall be considered to be commenced on the date when a complaint is filed with the Commissioner of the Department of Labor and Industry or the Director of the Wage and Hour Bureau, and notice of such complaint is served upon the employer; or, where an audit by the Department of Labor and Industry discloses a probable cause of action for unpaid minimum wages, unpaid overtime compensation, or other damages, and notice of such probable cause of action is served upon the employer by the Director of the Wage and Hour Bureau; or where a cause of action is commenced in a court of appropriate jurisdiction.

2. In any action or proceeding commenced prior to or on or after the date of the enactment of this act based on any act or omission prior to or on or after the date of the enactment of this act, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under this act, if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval or interpretation by the Commissioner of the Department of Labor and Industry or the Director of the Wage and Hour Bureau, or any administrative practice or enforcement policy of such department or bureau with respect to the class of employers to which he belonged. Such a defense, if established, shall be a complete bar to the action or proceeding, notwithstanding, that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

3. This act shall take effect immediately.

Chapter 19 Laws of 1968, as of
April 22, 1968, amends the Wage &
Hour Law to exclude persons employ-
ed as salesmen of motor vehicles
from coverage.

CHAPTER 113 LAWS OF N. J. 1966

APPROVED 6-17-66

NEW JERSEY STATE WAGE & HOUR LAW

AN ACT concerning minimum wage standards; providing for the enforcement of such standards and the orders and regulations made with respect thereto; prescribing penalties for the violation thereof, and supplementing Title 34 of the Revised Statutes.

34:11-56a. Minimum wage level; establishment

1. It is declared to be the public policy of this State to establish a minimum wage level for workers in order to safeguard their health, efficiency, and general well-being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency and well-being.

34:11-56a1. Definitions

2. As used in this act:

(a) "Commissioner" means the Commissioner of Labor and Industry.

(b) "Director" means the director in charge of the bureau referred to in section 3 of this act.

(c) "Wage board" means a board created as provided in section 10 of this act.

(d) "Wages" means any moneys 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 employee for services rendered for an employer or a customer of an employer and the fair value of any food or lodgings supplied by an employer to an employee. The commissioner may, by regulation, establish the average value of gratuities received by an employee in any occupation and the fair value of food and lodging provided to employees in any occupation which average values shall be acceptable for the purposes of determining compliance with this act in the absence of evidence of the actual value of such items.

(e) "Regularly hourly wage" means the amount that an employee is regularly paid for each hour of work as determined by dividing the

total hours of work during the week into the employee's total earnings for the week, exclusive of overtime premium pay.

(f) "Employ" includes to suffer or to permit to work.

(g) "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.

(h) "Employee" includes any individual employed by an employer.

(i) "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.

(j) "Minimum fair wage order" means a wage order promulgated pursuant to this act.

(k) "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.

(l) "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.

34:11-56a2. Bureau for administration of act

3. The commissioner shall maintain a bureau in the department to which the administration of this act, and of any minimum wage orders or regulations promulgated hereunder, shall be assigned, said bureau to consist of a director in charge and such assistants and employees as the commissioner may deem desirable.

34:11-56a3. Employment at unreasonable wage

4. The employment of an employee in any occupation in this State at an oppressive and unreasonable wage is hereby declared to be contrary to public policy and any contract, agreement or understanding for or in relation to such employment shall be void.

34:11-56a4. Minimum rate; overtime rate

5. Every employer shall (a) on and after the expiration of 180 days following the date of enactment of this act pay to each of his employees wages at a rate of not less than \$1.25 per hour, and (b) on and after January 1, 1968 at a rate of not less than \$1.40 per hour, and (c) on and after January 1, 1969 at a rate of not less than \$1.50 per hour for 40 hours of working time in any week and 1 and 1/2 times such employee's regular hourly wage for each hour of working time in excess of 40 hours in any week, except this overtime rate shall not include any individual employed in a bona fide executive, administrative, or professional capacity, or, if an applicable wage order has been issued by the commissioner under section 17 of this act, not less than the wages prescribed in

said order. The wage rates fixed in this section shall not be applicable to employees engaged in domestic service in the home of the employer, to persons under the age of 18 or to persons employed as outside salesmen as such term shall be defined and delimited in regulations adopted by the commissioner.

The provisions of this section for the payment to an employee of not less than 1 1/2 times such employee's regular hourly rate for each hour of working time in excess of 40 hours in any week shall not apply to employees engaged to labor on a farm, or employed in a hotel or to an employee of a common carrier of passengers by motor bus or employees engaged in labor relative to the raising or care of livestock.

34:11-56a5. Administrative regulations

6. For any occupation for which no wage order issued pursuant to section 17 of this act is in effect, the commissioner shall, within 6 months after the rate provided in section 5 is in effect, make such administrative regulations as he shall deem appropriate to carry out the purposes of this act or necessary to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates hereby established. Such regulations may include regulations defining and governing outside salesmen; learners and apprentices, their number, proportion and length of service; part-time pay; bonuses, overtime pay; special pay for special or extra work; or permitted charges to employees or allowances for board, lodging, apparel or other facilities or services customarily furnished by employers to employees; or allowances for such other special conditions or circumstances.

The commissioner shall publish such regulations as he proposes to issue and such regulations may be issued pursuant to this section only after a public hearing, subsequent to publication of notice of hearing, at which any person may be heard.

Such administrative regulations shall remain in effect only until such time as a wage order governing the occupation or occupations concerned, and to the extent inconsistent therewith, has been promulgated and becomes effective as provided in this act.

34:11-56a6. Authority of commissioner and director

7. The commissioner, the director and their authorized representatives shall have the authority to:

(a) investigate and ascertain the wages of persons employed in any occupation in the State;

(b) enter and inspect the place of business or employment of any employer or employees in any occupation in the State, for the purpose of examining and inspecting any or all books, registers, payrolls and other records of any such employer that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment

of any such employees; copy any or all of such books, registers, payrolls and other records as he or his authorized representative may deem necessary or appropriate; and question such employees for the purpose of ascertaining whether the provisions of this act and the orders and regulations issued hereunder have been and are being complied with; and

(c) require from such employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses and such other information pertaining to his employees and their employment as the commissioner, the director or their authorized representatives may deem necessary or appropriate.

34:11-56a7. Investigation of occupation

8. The commissioner shall have the power, on his own motion, and it shall be his duty upon the petition of 50 or more residents of the State, to cause the director to investigate any occupation to ascertain whether a substantial number of employees are receiving less than a fair wage.

34:11-56a8. Appointment of wage board

9. If the commissioner is of the opinion that a substantial number of employees in any occupation or occupations are receiving less than a fair wage, he shall appoint a wage board as provided in section 10 of this act to report upon the establishment of minimum fair wage rates for employees in such occupation or occupations.

34:11-56a9. Wage board

10. A wage board shall be composed of not more than 3 representatives of the employers in any occupation, an equal number of representatives of the employees in such occupation and not more than 3 disinterested persons representing the public, one of whom shall be designated by the commissioner as chairman. The commissioner after conferring with the director shall appoint the members of the wage board, the representatives of the employers and employees to be selected so far as practicable from nominations submitted by the employers and employees. Two-thirds of the members shall constitute a quorum and the recommendations or report of the wage board shall require a vote of not less than a majority of all its members. The commissioner after conferring with the director shall make and establish from time to time rules and regulations governing the selection of a wage board and its mode of procedure not inconsistent with this act. The members of a wage board shall serve without pay but may be reimbursed for all necessary expenses.

34:11-56a10. Powers of wage board

11. A wage board shall have power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of all books, records, and other evidence relative to matters under investigation. Such subpoena shall be signed and issued by the chairman of the wage board and shall be served and have the same effect as if issued

out of the Superior Court. A wage board shall have power to cause depositions of witnesses residing within or without the State to be taken in the manner prescribed for like dispositions in civil actions in the Superior Court.

34:11-56a11. Presentation of evidence and information

12. The commissioner or the director shall present to a wage board promptly upon its organization all the evidence and information in the possession of the commissioner or director relating to the wages of employees in the occupations for which the wage board was appointed and all other information which the commissioner or the director deems relevant to the establishment of a minimum fair wage, and shall cause to be brought before the committee any witnesses whom the commissioner or the director deems material. A wage board may summon other witnesses or call upon the commissioner or the director to furnish additional information to aid it in its deliberations.

34:11-56a12. Rules of evidence and procedure

13. The commissioner and the wage board in establishing a minimum fair wage, shall not be bound by technical rules of evidence or procedure, but may consider all relevant circumstances affecting the value of the service or class of service rendered; may consider the wages paid in the State for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards; and may be guided by like considerations as would guide a court in a suit for the reasonable value of services rendered at the request of the employer without agreement as to amount of wages to be paid.

34:11-56a13. Recommendations of wage board

14. The report of the wage board shall recommend minimum fair wage rates, on an hourly, daily or weekly basis for the employees in the occupation or occupations for which the wage board was appointed. The wage board may recommend establishment or modification of the number of hours per week after which the overtime rate established in section 5 shall apply and may recommend *the establishment or* modification of said overtime rate. The board may also recommend permitted charges to the employees or allowances for board, lodging, apparel, or other facilities or services customarily furnished by the employer to the employee; or allowances for such other special conditions or circumstances excluding gratuities which may be usual in a particular employer-employee relationship. A wage board may differentiate and classify employments in any occupation according to the nature of the service rendered and recommend appropriate minimum fair wage rates for different employments. It may recommend minimum fair wage rates varying with localities if in the judgment of the wage board conditions make such local differentiation proper.

A wage board may recommend a suitable scale of rates for learners and apprentices or students in any occupation which may be less than the regular minimum fair wage rates recommended for experienced employees.

34:11-56a14. Submission of report of wage board

15. Within 60 days of its organization a wage board shall submit to the commissioner a report including its recommendations as to minimum fair wage standards for the employees in the occupation or occupations the wage standards of which the wage board was appointed to investigate. If its report is not submitted within such time the commissioner may constitute a new wage board.

34:11-56a15. Report of wage board

16. On submission of the report of a wage board the commissioner shall within 10 days confer with the director and accept or reject the report.

If he rejects the report, he shall resubmit the matter to the same wage board or to a new wage board with a statement of his reasons for the rejection.

If he accepts the report, it shall be published within 30 days together with such proposed administrative regulations as the commissioner after conferring with the director may deem appropriate to supplement the report of the wage board and to safeguard the minimum fair wage standards to be established.

At the same time notice shall be given of a public hearing before the commissioner or the director, not sooner than 15 nor more than 30 days after such publication, at which all persons favoring or opposing the recommendations contained in the report or the proposed regulations may be heard.

34:11-56a16. Approval or disapproval of report

17. Within 10 days after the hearing the commissioner shall confer with the director and approve or disapprove the report of the wage board. If the report is disapproved the commissioner may resubmit the matter to the same wage board or to a new wage board. If the report is approved the commissioner shall make a wage order which shall define minimum fair wage rates in the occupation or occupations as recommended in the report of the wage board and which shall include such proposed administrative regulations as the commissioner may deem appropriate to supplement the report of the wage board and to safeguard the minimum fair wage standards established. Such administrative regulations may include among other things, regulations defining and governing learners and apprentices, their rates, number, proportion or length of service; piece rates or their relations to time rates; overtime or part-time rates, bonuses or special pay for special or extra work; deductions for

board, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances excluding gratuities; and in view of the diversities and complexities of different occupations and the dangers of evasion and nullification, the commissioner may provide in such regulations without departing from the basic minimum rates recommended by the wage board such modifications or reductions of or addition to such rates in or for such special cases or classes of cases as those herein enumerated as the commissioner may find appropriate to safeguard the basic minimum rates established. Said wage order shall take effect upon expiration of 180 days from the date of the issuance of the order.

34:11-56a17. Special certificates or licenses

18. (a) The commissioner, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation provide for the employment of learners, apprentices and students, under special certificates issued pursuant to regulations of the commissioner, at such wages lower than the minimum wage applicable under the provisions of this act and subject to such limitations as to time, number, proportion and length of service as the commissioner shall prescribe.

(b) For any occupation for which minimum fair wage order rates are established by or pursuant to this act the commissioner or the director may cause to be issued to an employee, including a learner, apprentice or student whose earning capacity is impaired by age or physical or mental deficiency or injury, a special license authorizing employment at such wages less than such minimum fair wage rates and for such period of time as shall be fixed by the commissioner or the director and stated in the license.

34:11-56a18. Modification of wage order

19. At any time after a minimum fair wage order has been in effect for 1 year or more, the commissioner may, on his own motion, after conferring with the director, and shall, on petition of 50 or more residents of the State, reconsider the minimum fair wage rates set therein and reconvene the same wage board or appoint a new board to recommend whether or not the rate, or rates, contained in such order, shall be modified. The report of such wage board shall be dealt with in the manner prescribed in sections 15, 16 and 17 of this act.

34:11-56a19. Additions or modifications to regulations

20. The commissioner may, from time to time after conference with the director and without reference to a wage board, propose such modifications of or additions to any administrative regulations issued pursuant to sections 6 and 17 of this act as he may deem appropriate to effectuate the purposes of this article; provided, such proposed modifications or additions could legally have been included in the original regu-

lation. Notice shall be given of a public hearing to be held by the commissioner or director not less than 15 days after such notice, at which all persons in favor of or opposed to the proposed modifications or additions may be heard. After the hearing the commissioner may make an order putting into effect the proposed modifications or additions to the administrative regulations as he deems appropriate.

34:11-56a20. Records by employer

21. Every employer of employees subject to this act shall keep a true and accurate record of the hours worked by each and the wages paid by him to each and shall furnish to the commissioner or the director or their authorized representative upon demand a sworn statement of the same. Such records shall be open to inspection by the commissioner or the director or their authorized representative at any reasonable time. No employer shall be found guilty of violating this provision for failure to keep a true and accurate record of the hours worked by outside salesmen, buyers of poultry, eggs, cream or milk in their natural or raw state or homeworkers legally employed in accordance with the laws of this State.

34:11-56a21. Summary of act, orders, and regulations

22. Every employer subject to any provision of this act or of any regulations or orders issued under this act shall keep a summary of this act, approved by the commissioner, and copies of any applicable wage orders and regulations issued under this act, or a summary of such wage orders and regulations, posted in a conspicuous and accessible place in or about the premises wherein any person subject thereto is employed. Employers shall be furnished copies of such summaries, orders, and regulations by the State on request without charge.

34:11-56a22. Violations of act; misdemeanor

23. Any employer who willfully hinders or delays the commissioner, the director or their authorized representatives in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner, the director or their authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner, the director or their authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or any wage order issued pursuant thereto, or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a misdemeanor and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$500.00 or by imprisonment of not less than 10 nor more than 90 days or by both such

fine and imprisonment. Each week, in any day of which an employee is paid less than the rate applicable to him under this act or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

34:11-56a23. Payments of amount due employees

24. As an alternative to any other sanctions, herein or otherwise provided by law for violation of this act or of any rule or regulations duly issued hereunder, the Commissioner of Labor and Industry is authorized to supervise the payment of amounts due to employees under this act, 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 directly to the employee or employees affected.

34:11-56a24. Discharge or discrimination against employee

25. Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the commissioner, the director or to their authorized representatives that he has not been paid wages in accordance with the provisions of this act, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, 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, shall be guilty of a misdemeanor and shall, upon conviction therefor, be fined not less than \$50.00 nor more than \$200.00. 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.

34:11-56a25. Civil action by employee

26. If any employee is paid by an employer less than the minimum fair wage to which such employee is entitled under the provisions of this act or by virtue of a minimum fair wage order such employee may recover in a civil action the full amount of such minimum wage less any amount actually paid to him or her by the employer together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between such employee and the employer to work for less than such minimum fair wage shall be no defense to the action. An employee shall be entitled to maintain such action for and on behalf of himself or other employees similarly situated, and such employee and employees may designate an agent or representative to maintain such action for and on behalf of all employees similarly situated. At the request of

any employee paid less than the minimum wage to which such employee was entitled under the provisions of this act or under an order, the commissioner may take an assignment of the wage claim in trust for the assigning employee and may bring any legal action necessary to collect the claim, and the employer shall be required to pay costs and such reasonable attorney's fees as may be allowed by the court.

34:11-56a26. Protection of right to collective bargaining

27. Nothing in this act shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively through representatives of their own choosing in order to establish wages in excess of the applicable minima under this act.

34:11-56a27. Partial invalidity

28. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application thereof, to other persons or circumstances shall not be affected thereby.

34:11-56a28. Supplementation to preceding law

29. This act shall supplement the provisions of article 2 of chapter 11 of Title 34 of the Revised Statutes. Nothing herein shall be deemed to supersede any of the provisions of said article 2 of chapter 11, of Title 34, except insofar as the wages entitled to be received by any employee under the provisions of this act and the regulations and wage orders issued thereunder exceed the wages such employee is entitled to receive under the provisions of said article 2, of chapter 11, of Title 34 of the Revised Statutes and the regulations and wage orders issued pursuant thereto.

34:11-56a29. Short title

30. This act shall be known as the "New Jersey State Wage and Hour Law."

31. This act shall take effect immediately.

STATE OF NEW JERSEY
DEPARTMENT OF LABOR AND INDUSTRY
REGULATIONS
CHAPTER 113 LAWS OF N.J. 1966

As provided for in Chapter 113, Laws of New Jersey, 1966, administrative regulations deemed appropriate to carry out the purposes of this act, and necessary to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established are hereby issued and designated as Regulations 1 through 9 inclusive.

REGULATION 1. — RECORDS

1.1 Every employer shall keep records which contain the name and address of each employee, the birth date if under the age of eighteen, the hours worked each day and each work week, earnings, including the regular hourly wage for any week when hours worked exceed 40, and the basis on which wages are paid (such as "\$1.50 an hour," "\$60.00 a week," "Piece work" etc.).

1.2 The employer may use any system of time keeping containing the items specified in paragraph 1.1 provided it is a complete, true, and accurate record.

1.3 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 week that the schedule was followed. When the employee works longer or shorter hours than the schedule indicates, the employer shall record the hours the worker actually worked.

1.4 Records containing the information required by these regulations shall be kept for six years.

1.5 Records must be kept at the place of employment or in a central office in New Jersey. In those unusual circumstances where it is not feasible to keep records in New Jersey, special exemption from this provision must be obtained from the Commissioner or his authorized representative. All records shall be open to inspection by the Commissioner or the Director of their authorized representatives at any reasonable time.

1.6 Supplementary to the provisions of any section of the regulations pertaining to the records to be kept with respect to employees, 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.

1.7 Employees receiving gratuities must report them either daily or weekly as required by the employer. The information in the report must 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.

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

1.9 Supplementary to the provisions of any section of the regulations pertaining to the records to be kept with respect to employees, every employer of employees who receive food or lodgings supplied by the employer shall maintain and preserve records substantiating the cost of furnishing such food or lodgings.

1.10 Such records shall include the nature and amount of any expenditures entering into the computation of the fair value of the food and lodgings as defined in these regulations and shall contain the data 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 or his representatives to verify the nature of the expenditure and amount by reference to the basic records which must be preserved pursuant to these regulations.

1.11 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 Law 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.

REGULATION 2. — HOURS WORKED

2.1 Employees who are entitled to the benefits of the New Jersey State Wage and Hour Law must be paid for all hours worked.

2.2 All time the employee is required to be at his place of work or on duty is to be counted as hours worked. Nothing in this law requires an employer to pay an employee for hours the employee is not required

to be at his place of work because of holidays, vacation, lunch hours, illness, and similar reasons.

2.3 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.

2.4 A workweek is a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods. The workweek need not be the same as the calendar week; it may begin any day of the week and any hour of the day. The workweek shall be designated in advance. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked. 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 law.

REGULATION 3. — OVERTIME

3.1 Effective December 15, 1966, for each hour of working time in excess of 40 hours in any week, every employer shall pay to each of his employees, wages at a rate of not less than one and one-half times such employee's regular hourly wage.

3.2 Overtime and minimum wage pay must be computed on the basis of each workweek standing alone. Hours cannot be averaged over two or more workweeks.

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

3.4 Covered employees are to be paid one and one-half times the regular hourly wage for each hour of working time in excess of 40 hours in any workweek. There is no requirement that an employee be paid premium overtime compensation for hours in excess of eight per day, or for work on Saturdays, Sundays, holidays or regular days of rest, other than the required overtime for over 40 hours per week. However, nothing in the Law will relieve an employer of any obligation he may have assumed by contract or of any obligation imposed by other State or Federal law to limit overtime hours of work or to pay premium rates for work which are in excess of the minimum required by this Law.

3.5 The "regular hourly wage" under the Law is a rate per hour. The Law 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 must be paid on the basis of the hourly rate derived therefrom. Therefore, the regular hourly wage of an employee is determined by dividing his 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. If an employee is remunerated solely on the basis of a single hourly rate, the hourly rate is his "regular hourly wage."

3.6 The "regular hourly wage" shall not be deemed to include:

(a) Payments in the nature of gifts made at Christmas time 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;

(b) Payments made for occasional periods when no work is performed due to vacation, holiday, or other similar cause; reasonable payments for traveling or other expenses incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer which are not made as compensation for employment;

(c) Sums paid in recognition of services performed during a given period if either:

(1) Both the fact that payment is to be made and the amount of the 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

(2) 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

(d) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees; or

(e) Additional premium compensation for hours worked in excess of eight per day, or for work on Saturdays, Sundays, holidays, or regular days of rest; or

(f) Overtime premiums.

3.7 Overtime premium payments cannot 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 are therefore cash payments by the employer. 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 the law if the premium payment for the overtime hours is paid in cash on the basis of the agreed regular hourly wage but in no event shall the premium payment be at a rate less than the applicable minimum rate.

REGULATION 4. — EXEMPTIONS FROM OVERTIME

4.1 Executive

The term "executive" shall mean any employee:

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

(b) Who customarily and regularly directs the work of two or more other employees therein; and

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

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who devotes less than 20% of his work week to non-exempt work (less than 40% if employed by a retail or service establishment); and

(f) Who is compensated for his services on a salary basis at a rate of not less than \$100 per week, exclusive of gratuities, board, lodging, or other facilities.

(g) The term "executive" shall also include employees owning a bona fide equity in the enterprise of 20 per cent or more.

The term "executive" does not include employees training to become executives and not actually performing the duties of an executive.

4.2 Administrative

The term "administrative" shall mean any employee:

(a) Whose primary duty consists of the performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c) (1) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in these regulations), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who devotes less than 20% of his work to non-exempt work (less than 40% if employed by a retail or service establishment); and

(e) Who is compensated for his services on a salary or fee basis at a rate of not less than \$100 per week, exclusive of gratuities, board, lodging, or other facilities.

(f) The term "administrative" shall also include an employee whose primary duty consists of sales activity and who receives at least 50% of his total compensation from commissions and a total compensation of not less than \$150 per week.

4.3 Professional

The term "professional" shall mean any employee:

(a) Whose primary duty consists of the performance of work:

(1) 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

(2) 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

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) 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 in relation to a given period of time; and

(d) Who devotes less than 20% of his work week to non-exempt work; and

(e) Who is compensated for his services on a salary or fee basis at a rate of not less than \$100 per week, exclusive of gratuities, board, lodging, or other facilities.

4.4 Outside Salesmen

The term "outside salesmen" shall mean any employee:

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

(1) Making sales, or

(2) 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

(b) Whose hours of work of a nature other than that described in

paragraph (a) (1) or (a) (2) of this section do not exceed 20 per cent of hours worked in the workweek by the outside salesman:

Provided, that work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall be regarded as exempt work. Employees who basically drive vehicles and who only incidentally or occasionally make sales do not qualify for this exemption.

REGULATION 5. — GRATUITIES, FOOD, LODGING

5.1 Gratuities

(a) The term "wages," as used in the Law, includes gratuities received by an employee for services rendered for an employer or a customer of an employer and the fair value of any food or lodging supplied by an employer to an employee.

(b) Only cash gratuities actually received by an employee are to be considered wages.

(c) Where employees practice gratuity splitting (for example, where waiters pay a portion of the gratuities received by them to bus-boys) each employee is to have included in wages only the applicable proportionate share.

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

(1) Statements, including U.S. Treasury Department, Internal Revenue Service, "Employee's Report on Tips," that are furnished by employee to 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.

(e) Provided there is 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 in his establishment based upon a percentage of gross sales apportioned on basis of hours worked among the tipping occupation employees.

(1) derived from a representative sampling of the sources indicated in paragraphs (d) (1) and (2), or

(2) 10 per cent, or

(3) such other method as may be agreed upon subject to the approval of the Commissioner.

(f) In no event shall paragraphs (d) and (e) above be interpreted to deny to an employee the right to make a claim for additional cash

compensation where it is shown to the satisfaction of the Bureau that the actual amount of tips received was less than the amount determined by the employer.

5.2 Food and Lodging

(a) "Fair value" is hereby determined to be not more than the actual cost to the employer of the food or lodging supplied by an employer to an employee.

(b) "Fair value" does not include a profit to the employer or to any affiliated business or person.

(c) 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 (not more than 6 per cent) for interest on the depreciated amount of capital invested by the employer. The "fair value" so computed shall not exceed the rental value of comparable facilities in the State. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be arrived at under good accounting practices. "Good accounting practices" does 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.

(d) Items found to be primarily for the benefit of convenience of the employer are not to be included in the cost. Lodging furnished which is in violation of any Federal, State, or local law, ordinance or prohibition shall be valued at nothing.

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

(f) Example: Employer A has three employees who are furnished food and lodging in addition to gross cash wages of \$1.00 per hour. The cost of food purchased for the employees is \$36.00 total a week. The building housing the employees cost \$18,000.00 in 1956 and subsequent improvements amounted to \$2,000.00. Maintenance costs for the year were \$1,240.00. The estimated life of the building when constructed was fifty years. The building can adequately house six persons.

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

Total cost	\$ 36.00
Fair value per employee (36.00 ÷ 3)	\$ 12.00

The "fair value" of lodging for year 1966 is determined as follows:

Cost of building in 1956	\$18,000.00
Add: Subsequent improvements	2,000.00
Total cost	\$20,000.00

Depreciation for year (1/50 x \$20,000.00)	\$ 400.00
Maintenance costs for year	\$ 1,240.00
Interest on employer's net investment:	
Total investment	\$20,000.00
Depreciation to date	4,000.00
Net Investment	\$16,000.00
6%	\$ 960.00
Total for year	\$ 2,600.00
Total for week (\$2,600 ÷ 52)	\$ 50.00
Fair value per employee (\$50. ÷ 6 capacity)	\$ 8.33

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

Gross cash wages (40 x \$1.00)	\$ 40.00
Fair value of food	12.00
Fair value of lodging	8.33
Gross weekly wage	\$ 60.33
Hourly wage (\$60.33 ÷ 40)	\$ 1.51

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. x \$1.00)	\$ 48.00
Fair value of food	12.00
Fair value of lodging	8.33
Total straight time wages	\$68.33

Overtime Wages:

Regular hourly wage (\$68.33 ÷ 48 hrs. worked)	\$1.424
Overtime pay 8 x .712 (\$1.424 x 1/2)	5.69

Employee B wage entitlement for 48 hours. \$74.02

5.3 Cash wage guarantee

In food service occupations an employee's cash wages shall not fall below 66¢ per hour after allowances are made for gratuities, food and lodging.

REGULATION 6.—EMPLOYMENT OF HANDICAPPED PERSONS

6.1 Definitions:

(a) "Handicapped person" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury or previous confinement in a mental or correctional institution and who is being served in accordance with the recognized rehabilitation program of a sheltered workshop, educational 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 or physical or mental deficiency or injury, and of providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

6.2 Authorization to employ handicapped persons at wages less than minimum fair wage rates for such period of time fixed and stated in the authorization may be issued upon proper application. This authorization shall be known as a "Special Handicap Permit." A blanket Special Handicap Permit may be issued for an entire Sheltered Workshop or a department of a Sheltered Workshop.

6.3 Application for a Special Handicap Permit shall be filed with the Department of Labor and Industry, Wage and Hour Bureau, on properly executed prescribed forms.

6.4 The following criteria may be considered in determining the necessity of issuing a Special Handicap Permit:

- (a) The present and previous earnings of handicapped employees;
- (b) The nature and extent of the handicap;
- (c) The wages of non-handicapped employees engaged in comparable work;
- (d) The types and duration of rehabilitative services;
- (e) The extent to which handicapped persons share, through wages, in the receipts for work done;
- (f) The extent to which the handicapped employees are learners;
- (g) 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;
- (h) The productivity of the handicapped employee.

6.5 All terms and conditions under which a Special Handicap Permit is granted shall be complied with.

6.6 No individual who is not a handicapped person shall be

employed under a Special Handicap Permit at wages lower than the minimum required by Chapter 113, Laws of New Jersey, 1966.

6.7 The Commissioner or his authorized representative may cancel any Special Handicap Permit for cause. A Special Handicap Permit may be canceled as of the date of issuance, if it is found that fraud has been exercised in obtaining the Special Handicap Permit or in permitting a handicapped person to work thereunder; or as of the date of the violation, if it is found that any of the provisions of Chapter 113, Laws of New Jersey, 1966, or of the terms of the Special Handicap Permit have been violated; or as of the date of notice of cancellation if in the judgment of the Commissioner the Special Handicap Permit is no longer necessary in the interest of the employees covered.

REGULATION 7.—EMPLOYMENT OF LEARNERS, APPRENTICES, AND STUDENTS

7.1 Authorization to employ learners, apprentices and students at wages less than the minimum fair wage rates for such period of time fixed and stated in the authorization may be issued upon proper application when in the opinion of the Commissioner such authorization is necessary in order to prevent curtailment of opportunities of employment. This authorization shall be known as a "Special Learner, Apprentice, and Student Permit."

7.2 Application for a Special Learner, Apprentice, and Student Permit shall be filed with the Department of Labor and Industry, Wage and Hour Bureau, on properly executed prescribed forms.

7.3 All terms and conditions under which a Special Learner, Apprentice, and Student Permit is granted shall be complied with.

7.4 No individual who is not a learner, apprentice, or student shall be employed under a Special Learner, Apprentice, and Student Permit at wages lower than the minimum required by Chapter 113, Laws of New Jersey, 1966.

7.5 The Commissioner or his authorized representative may cancel any Special Learner, Apprentice, and Student Permit for cause. A Special Learner, Apprentice, and Student Permit may be canceled as of the date of issuance, if it is found that fraud has been exercised in obtaining the Special Learner, Apprentice, and Student Permit or in permitting a learner, apprentice or student to work thereunder; or as of the date of the violation, if it is found that any of the provisions of Chapter 113, Laws of New Jersey, 1966, or of the terms of the Special Learner, Apprentice, and Student Permit have been violated; or as of the date of notice of cancellation if in the judgment of the Commissioner the Special Learner, Apprentice, and Student Permit is no longer necessary in the interest of the employees covered.

REGULATION 8. — PERSONS UNDER THE AGE OF EIGHTEEN

8.1 These persons are excluded only from the statutory wage rates established by Section 5 of the Law. The New Jersey State Wage and Hour Law supplements Article 2 of Chapter II of Title 34 of the Revised Statutes. The new law supersedes the old only when the employee's entitlement under it exceeds the pre-existing law. Therefore, persons under the age of eighteen remain covered by wage order rates in Mercantile, Restaurant, Beauty Culture, and Laundry and Cleaning and Dyeing occupations.

REGULATION 9. — VOLUNTEERS

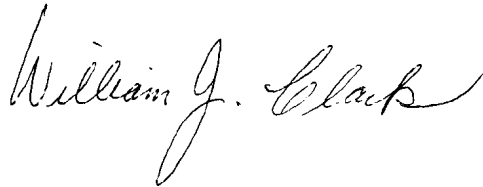
9.1 Persons who donate their services (1) for the protection of the health and safety of the general public such as volunteer firemen and rescue workers or (2) in the care of the sick, aged, young, mentally ill, destitute, and like, including volunteer services in religious, eleemosynary, educational, hospital, cultural and similar activities, shall not be considered to be employees. Nor shall patients (alcoholics, drug addicts, etc.) in programs administered by organized and generally recognized charities be considered employees by reason of the receipt of inconsequential payments.

These regulations are effective December 15, 1966.

For and on behalf of the Commissioner of Labor and Industry.



Samuel DiUbaldo
Deputy Commissioner



William J. Clark
Director, Wage and Hour Bureau

Dated: December 5, 1966