NJ State Wage and Hour Laws and Regulations

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Please note that as of July 1, 2004, the formal name of the Department as denoted below as "The Department of Labor and Industry" or the "Department of Labor" will henceforth be denoted as "The Department of Labor and Workforce Development".

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CHAPTER 11 WAGE AND HOUR LAW
ARTICLE 2. MINIMUM WAGE STANDARDS

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

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.

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34:11-56a1. Definitions relative to minimum wages

As used in this act:

(a) "Commissioner" means the Commissioner of Labor and Workforce Development.

(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 the fair value of any food or lodgings supplied by an employer to an employee, and, until December 31, 2018, "wages" includes any gratuities received by an employee for services rendered for an employer or a customer of an employer. 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) "Regular 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, and the State and any county, municipality, or school district in the State, or any agency, authority, department, bureau, or instrumentality thereof, 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.

(m) "Limousine" means a motor vehicle used in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis that is not conducted on a regular route and with a seating capacity in no event of more than 14 passengers, not including the driver, provided, that such a motor vehicle shall not have a seating capacity in excess of four passengers, not including the driver, beyond the maximum passenger seating capacity of the vehicle, not including the driver, at the time of manufacture. "Limousine" shall not include taxicabs, hotel or airport shuttles and buses, buses employed solely in transporting school children or teachers to and from school, vehicles owned and operated directly or indirectly by businesses engaged in the practice of mortuary science when those vehicles are used exclusively for providing transportation related to the provision of funeral services or vehicles owned and operated without charge or remuneration by a business entity for its own purposes.

(n) "Seasonal employment" means employment during a year by an employer that is a seasonal employer ,or employment by a non-profit or government entity of an individual who is not employed by that employer outside of the period of that year commencing on May 1 and ending September 30, or employment by a governmental entity in a recreational program or service during the period commencing on May 1 and ending September 30, except that "seasonal employment" does not include employment of employees engaged to labor on a farm on either a piece-rate or regular hourly rate basis .

(o) "Seasonal employer" means an employer who exclusively provides its services in a continuous period of not more than ten weeks during the months of June, July, August, and September, or an employer for which, during the immediately previous calendar year, not less than two thirds of the employer’s gross receipts were received in a continuous period of not more than sixteen weeks or for which not less than 75 percent of the wages paid by the employer during the immediately preceding year were paid for work performed during a single calendar quarter.

(p) "Small employer" means any employer who employed less than six employees for every working day during each of a majority of the calendar workweeks in the current calendar year and less than six employees for every working day during not less than 48 calendar workweeks in the preceding

calendar year, except that, if the employer was newly established during the preceding calendar year, the employer shall be regarded as a "small employer" if the employer employed less than six employees for every working day during all of the weeks of that year, and during a majority of the calendar workweeks in the current calendar year, and, if the employer is newly established during the current calendar year, the employer shall be regarded as a "small employer" if the employer employed less than six employees for every working day during a majority of the calendar workweeks in the current calendar year.

(q) "Long-term care facility direct care staff member" means any health care professional licensed or certified pursuant to Title 26 or Title 45 of the Revised Statutes who is employed by a long-term care facility and who provides personal care, assistance, or treatment services directly to residents of the facility in the course of the professional's regular duties.

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34:11-56a2. Bureau for administration of act; director and assistants

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.

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34:11-56a3. Employment at unreasonable wage declared contrary to public policy; contract or agreement void

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.

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34:11-56a4. Minimum wage rate; exemptions

5. a. Except as provided in subsections c., d., e. and g. of this section, each employer shall pay to each of his employees wages at a rate of not less than $8.85 per hour as of January 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent year, the minimum wage shall be increased by any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government for the 12 months prior to the September 30 preceding that January 1, except that any of the following rates shall apply if it exceeds the rate determined in accordance with the applicable increase in the CPI-W for the indicated year: on July 1, 2019, the minimum wage shall be $10.00 per hour; on January 1, 2020, the minimum wage shall be $11.00 per hour; and on January 1 of each year from 2021 to 2024, inclusive, the minimum wage shall be increased from the rate of the preceding year by $1.00 per hour. If the federal minimum hourly wage rate set by section 6 of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a level higher than the State minimum wage rate set by this subsection, then the State minimum wage rate shall be increased to the level of the federal minimum wage rate and subsequent increases based on increases in the CPI-W pursuant to this section shall be applied to the higher minimum wage rate. If an applicable wage order has been issued by the commissioner under section 17 (C.34:11-56a16) of this act, the employer shall also pay not less than the wages prescribed in said order. The wage rates fixed in this section shall not be applicable to part-time employees primarily engaged in the care and tending of children in the home of the employer, to persons under the age of 18 not possessing a special vocational school graduate permit issued pursuant to section 15 of P.L.1940, c.153 (C.34:2-21.15), or to persons employed as salesmen of motor vehicles, or to persons employed as outside salesmen as such terms shall be defined and delimited in regulations adopted by the commissioner, or to persons employed in a volunteer capacity and receiving only incidental benefits at a county or other agricultural fair by a nonprofit or religious corporation or a nonprofit or religious association which conducts or participates in that fair.

b. (1) An employer shall also pay each employee 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, except that this overtime rate shall not apply: to any individual employed in a bona fide executive, administrative, or professional capacity; or 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 to a limousine driver who is an employee of an employer engaged in the business of operating limousines; or to employees engaged in labor relative to the raising or care of livestock.

(2) Employees engaged on a piece-rate or regular hourly rate basis to labor on a farm shall be paid for each day worked not less than the applicable minimum hourly wage rate multiplied by the total number of hours worked.

(3) Full-time students may be employed by the college or university at which they are enrolled at not less than 85% of the effective applicable minimum wage rate.

c. Employees of a small employer, and employees who are engaged in seasonal employment, except for employees who customarily and regularly receive gratuities or tips who shall be subject to the provisions of subsections a. and d. of this section, shall be paid $8.85 per hour as of January 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent year, that minimum wage rate shall be increased by any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government for the 12 months prior to the September 30 preceding that January 1, except that any of the following rates shall apply if it exceeds the rate determined in accordance with the applicable increase in the CPI-W for the indicated year: on January 1, 2020, the minimum wage shall be $10.30 per hour; and on January 1 of each year from 2021 to 2025, inclusive, the minimum wage shall be increased from the rate of the preceding year by eighty cents per hour, and, in 2026, the minimum wage shall be increased from the rate of the preceding year by seventy cents per hour, and, in each year from 2027 to 2028 inclusive, the minimum wage for employees subject to this subsection c. shall be increased by the same amount as the increase for employees subject to subsection a. of this section based on CPI-W increases, plus one half of the difference between $15.00 per hour and the minimum wage in effect in 2026 for employees pursuant to subsection a. of this section, so that, by 2028, the minimum wage for employees subject to this subsection shall be the same as the minimum wage in effect for employees subject to subsection a. of this section. If the federal minimum hourly wage rate set by section 6 of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a level higher than the State minimum wage rate set by this subsection, then the State minimum wage rate shall be increased to the level of the federal minimum wage rate and subsequent increases based on increases in the CPI-W pursuant to this subsection shall be applied to the higher minimum wage rate.

d. Employees engaged on a piece-rate or regular hourly rate basis to labor on a farm shall be paid $8.85 per hour as of January 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent year, that minimum wage rate shall be increased by any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government for the 12 months prior to the September 30 preceding that January 1, except that any of the following rates shall apply if it exceeds the rate determined in accordance with the applicable increase in the CPI-W for the indicated year:

(1) on January 1, 2020, the minimum wage shall be $10.30 per hour; on January 1, 2022, the minimum wage shall be $10.90 per hour; and on January 1 of each year from 2023 to 2024, inclusive, the minimum wage shall be increased from the rate of the preceding year by eighty cents per hour; and

(2) subject to the provisions of paragraph (3) of this subsection d., minimum wage rates shall be increased as follows: on January 1 of 2025, the minimum wage shall be increased to $13.40, and on January 1 of each year from 2026 to 2027, inclusive, the minimum wage shall be increased from the rate of the preceding year by eighty cents per hour, and, in each year from 2028 to 2030 inclusive, the minimum wage for employees subject to this subsection d. shall be increased during that year by the same amount as the increase in that year for employees subject to subsection a. of this section based on CPI-W increases, plus one third of the difference between $15.00 per hour and the minimum wage in effect in 2027 for employees pursuant to subsection a. of this section, so that, by 2030, the minimum wage for employees subject to this subsection shall be the same as the minimum wage in effect for employees subject to subsection a. of this section.

(3) Not later than March 31, 2024, the commissioner and the Secretary of Agriculture shall review the report issued by the commissioner pursuant to subsection b. of section 4 of P.L.2019, c.32 (C.34:11-56a4.10) and shall consider any information provided by the secretary regarding the impact on farm employers and the viability of the State's agricultural industry of the increases of the minimum wage made pursuant to paragraph (1) of this subsection, and the potential impact of the increases which would be set by paragraph (2) of this subsection, including comparisons with the wage rates in the agricultural industries in other states, and shall recommend: approval of the increases set forth in paragraph (2) of this subsection; disapproval of the increases set forth in paragraph (2) of this

subsection; or an alternative manner of changing the minimum wage after 2024 for employees engaged on a piece-rate or regular hourly rate basis to labor on a farm. In contemplation of the possibility that the commissioner and the secretary are unable to agree on the recommendation required by this paragraph, by December 31, 2021, the Governor shall appoint a public member subject to advice and consent by the Senate, who will serve as a tie-breaking member if needed. The increases set forth in paragraph (2) of this subsection shall take effect unless there is a recommendation pursuant to this paragraph to disapprove the increases or for an alternative manner of changing the minimum wage after 2024 for employees engaged on a piece-rate or regular hourly rate basis to labor on a farm and the Legislature, not later than June 30, 2024, enacts a concurrent resolution approving the implementation of that recommendation. Beginning in 2024, the commissioner, secretary, and public member shall meet biennially to make either a one or two year recommendation to the Legislature for implementation by way of concurrent resolution.

(4) If the federal minimum hourly wage rate set by section 6 of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a level higher than the State minimum wage rate set by this subsection, then the State minimum wage rate shall be increased to the level of the federal minimum wage rate and subsequent increases based on increases in the CPI-W pursuant to this subsection shall be applied to the higher minimum wage rate.

e. With respect to an employee who customarily and regularly receives gratuities or tips, every employer is entitled to a credit for the gratuities or tips received by the employee against the hourly wage rate that would otherwise be paid to the employee pursuant to subsection a. of this section of the following amounts: after December 31, 2018 and before July 1, 2019, $6.72 per hour; after June 30, 2019 and before January 1, 2020, $7.37 per hour; during calendar years 2020, 2021 and 2022, $7.87 per hour; during calendar year 2023, $8.87 per hour; and during calendar year 2024 and subsequent calendar years, $9.87 per hour.

f. Notwithstanding the provisions of this section to the contrary, 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 section 31502(b) of the federal Motor Carrier Act, 49 U.S.C.s.31502(b), an overtime rate not less than 1 1/2 times the minimum wage required pursuant to this section and N.J.A.C. 12:56-3.1. Employees engaged in the trucking industry shall be paid no less than the minimum wage rate as provided in this section and N.J.A.C. 12:56-3.1. As used in this section, "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, including the storage and warehousing of goods and property. Such an employer shall also be subject to the jurisdiction of the Secretary of Transportation pursuant to the federal Motor Carrier Act, 49 U.S.C.s.31501 et seq., whose employees are exempt under section 213(b)(1) of the federal "Fair Labor Standards Act of 1938," 29 U.S.C. s.213(b)(1), which provides an exemption to employees regulated by section 207 of the federal "Fair Labor Standards Act of 1938," 29 U.S.C. s.207, and the Interstate Commerce Act, 49 U.S.C. s.501 et al.

g. Commencing on January 1, 2020, a training wage of not less than 90 percent of the minimum wage rate otherwise set pursuant to subsection a. of this section may be paid to an employee who is enrolled in an established employer on-the-job or other training program which meets standards set by regulations adopted by the commissioner. The period during which an employer may pay the training wage to the employee shall be the first 120 hours of work after hiring the employee in employment in an occupation in which the employee has no previous similar or related experience. An employer shall not utilize any employee paid the training wage in a manner which causes, induces, encourages or assists any displacement or partial displacement of any currently employed worker, including any previous recipient of the training wage, by reducing hours of a currently employed worker, replacing a current or laid off employee with a trainee, or by relocating operations resulting in a loss of employment at a previous workplace, or in a manner which replaces, supplants, competes with or duplicates any approved apprenticeship program. An employer who pays an employee a training wage shall make a good faith effort to continue to employ the employee after the period of the training wage expires and shall not hire the employee at the training wage unless there is a reasonable expectation that there will be regular employment, paying at or above the effective minimum wage, for the trainee upon the successful completion of the period of the training wage. If the commissioner determines that an employer has made repeated, knowing violations of the provisions of this subsection regarding the payment of a training wage, the commissioner shall suspend the employer's right to pay a training wage for a period set pursuant to regulations adopted by the commissioner, but not less than three years.

h. The provisions of this section shall not be construed as prohibiting any political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing any standard for vendors, contractors and subcontractors of the subdivision regarding

wage rates or overtime compensation which is higher than the standards provided for in this section, and no provision of any other State or federal law establishing a minimum standard regarding wages or other terms and conditions of employment shall be construed as preventing a political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing a standard for vendors, contractors and subcontractors of the subdivision which is higher than the State or federal law or which otherwise provides greater protections or rights to employees of the vendors, contractors and subcontractors of the subdivision, unless the State or federal law expressly prohibits the subdivision from adopting the ordinance, resolution, regulation or rule, or entering into the agreement.

i. Effective on the first day of the second month next following the effective date of P.L.2020, c.89 (C.30:4D-7cc et al.), the minimum wage for long-term care facility direct care staff members shall be in an amount that is $3 higher than the prevailing minimum wage established pursuant to subsection a. of this section.

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34:11-56a4.2. Application of act to wages under wage orders

The provisions of this act shall be applicable to wages covered by wage orders issued pursuant to section 17 of P.L.1966, c. 113 (C. 34:11-56a16).

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34:11-56a4.3. Date of application of act

The provisions of this act shall be applicable to wages covered by wage orders issued pursuant to section 17 of P.L.1966, c. 113 (C. 34:11-56a16).

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34:11-56a4.4. Date of application of L.1976, c. 88

The provisions of this act shall be applicable to wages covered by wage orders issued pursuant to section 17 of P.L.1966, c. 113 (C. 34:11-56a16).

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34:11-56a4.5. Application of L.1979, c. 32

The provisions of this act shall be applicable to wages covered by wage orders issued pursuant to section 17 of P.L.1966, c. 113 (C. 34:11-56a16).

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34:11-56a4.6. Application of L.1980, c. 182

The provisions of this act shall be applicable to wages covered by wage orders issued pursuant to section 17 of P.L.1966, c. 113 (C. 34:11-56a16).

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34:11-56a4.7 New Jersey Minimum Wage Advisory Commission

a. There is created a commission to be known as the "New Jersey Minimum Wage Advisory Commission," which shall be a permanent, independent body in but not of the Department of Labor and Workforce Development. The commission shall consist of five members as follows: the Commissioner of Labor and Workforce Development, ex officio, who shall serve as chair of the commission, and four members appointed by the Governor as follows: two persons who shall be nominated by organizations who represent the interests of the business community in this State and two persons who shall be nominated by the New Jersey State AFL-CIO.

b. Members shall be appointed not later than December 31, 2005. Members shall be appointed for four-year terms and may be re-appointed for any number of terms. Any member of the commission

may be removed from office by the Governor, for cause, upon notice and opportunity to be heard. Vacancies shall be filled in the same manner as the original appointment for the balance of the unexpired term. A member shall continue to serve upon the expiration of his term until a successor is appointed and qualified, unless the member is removed by the Governor.

c. Action may be taken by the commission by an affirmative vote of a majority of its members and a majority of the commission shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission.

d. Members of the commission shall serve without compensation, but may be reimbursed for the actual and necessary expenses incurred in the performance of their duties as members of the commission within the limits of funds appropriated or otherwise made available for that purpose.

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34:11-56a4.8. Annual evaluation of adequacy of minimum wage.

a. The commission shall annually evaluate the adequacy of the minimum wage relative to the following factors:

(1) The overall cost of living in the State;

(2) Changes in the components of the cost of living which have the greatest impact on low-income families, including increases in the cost of housing, food, transportation, health care and child care;

(3) The cost of living in the State compared to that of other states;

(4) Changes in the purchasing power of the minimum wage; and

(5) Changes in the value of the minimum wage relative to the federal poverty guidelines, the federal lower living standard income level guidelines and the self-sufficiency standards established as goals for State and federal employment and training services pursuant to section 3 of P.L.1992, c.43 (C.34:15D-3) and section 1 of P.L.1992, c.48 (C.34:15B-35).

b. In furtherance of its evaluation, the commission may hold public meetings or hearings within the State on any matter or matters related to the provisions of this act, and call to its assistance and avail itself of the services of the John J. Heldrich Center for Workforce Development and the employees of any other State department, board, commission or agency which the commission determines possesses relevant data, analytical and professional expertise or other resources which may assist the commission in discharging its duties under this act. Each department, board, commission or agency of this State is hereby directed, to the extent not inconsistent with law, to cooperate fully with the commission and to furnish such information and assistance as is necessary to accomplish the purposes of this act.

c. The commission shall submit a written report of its findings regarding the adequacy of the minimum wage and its recommendations as to whether, or how much, to increase the minimum wage to the Governor and to the Legislature, who shall immediately review the commission report upon its receipt. Each House of the Legislature shall consider the commission report within 120 days of the receipt of the report. The first report shall be submitted to the Legislature no sooner than October 1, 2007 and no later than December 31, 2007, and subsequent reports shall be submitted in one year intervals thereafter.

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34:11-56a4.9. "Task Force on Wages and State Benefits"

a. There is established, in but not of the Department of Labor and Workforce Development, the "Task Force on Wages and State Benefits." The task force shall consist of 11 members, including the Commissioners of Health, Human Services, Education, Community Affairs, and Labor and Workforce Development, and the State Treasurer, or their designees, all who shall serve ex officio, and five public members appointed by the Governor with the advice and consent of the Senate as follows: one person nominated by an organization which represents the interests of the business community in this State, one person nominated by the New Jersey State AFL-CIO, two persons nominated by organizations representing the interests of low-income individuals, and one person representing the interests of other disadvantaged individuals who rely on services and benefits provided or

administered by the State or its instrumentalities. Public members shall be appointed for four-year terms and may be re-appointed for any number of terms. Any public member of the task force may be removed from office by the Governor, for cause, upon notice and opportunity to be heard. Vacancies shall be filled in the same manner as the original appointment for the balance of the unexpired term. A member shall continue to serve upon the expiration of the member's term until a successor is appointed and qualified, unless the member is removed by the Governor.

b. Action may be taken by the task force by an affirmative vote of a majority of its members and a majority of the task force shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the task force. Members of the task force shall serve without compensation, but may be reimbursed for the actual and necessary expenses incurred in the performance of their duties as members of the task force within the limits of funds appropriated or otherwise made available for that purpose.

c. The purpose of the task force is to evaluate how changes in required minimum wage levels pursuant to P.L.2019, c.32 (C.34:11-56a4.9 et al.) may affect the eligibility of low income individuals, and other disadvantaged individuals, for a variety of services and benefits provided or administered by the State or its instrumentalities, including, but not limited to, health, human services, childcare, education, housing and tax benefits, and how the combination of changes in minimum wage and eligibility standards may impact the living standards of the individuals and their families. The task force shall produce annual reports of its findings, which shall include any recommendations the task force deems appropriate for adjustments in eligibility standards for the benefits, changes in benefit subsidy rates, and other relevant reforms, to ensure that the combination of minimum wage increases and State services and benefits are coordinated effectively so as to further advance the overall goal of raising the living standards of working families.

d. In furtherance of its evaluation, the task force may hold public meetings or hearings within the State and call to its assistance and avail itself of the services of the employees of any other State department, board, or agency which the task force determines possesses relevant data, analytical and professional expertise or other resources which may assist the task force in discharging its duties under this section. Each department, board, or agency of this State is hereby directed, to the extent not inconsistent with law, to cooperate fully with the task force and to furnish such information and assistance as is necessary to accomplish the purposes of this section.

e. The task force shall issue its first annual report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature not later than September 30, 2019, and make the report available to the public by means including the posting of the report on the web sites of all of the State departments represented on the task force. Each subsequent annual report shall be issued and made available to the public not later than September 30 of the respective year and shall include a review of any administrative and legislative actions taken in response to recommendations of previous reports of the task force, together with an evaluation of the effectiveness of the actions in facilitating the overall goal of raising the living standards of working families, and any further recommendation deemed appropriate by the task force.

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34:11-56a4.10. Impact reports in 2019-2023 calendar years

a. The commissioner shall, not later than September 30, 2024, issue and post on the Department of Labor and Workforce Development website a report which evaluates the impacts on employers and employees of the credits provided in calendar years 2019 through 2023 to employers for gratuities and tips pursuant to subsection e. of section 5 of P.L.1966, c.113 (C.34:11-56a4). The report shall evaluate the adequacy of the minimum wage of employees who customarily and regularly receive gratuities or tips after adjustment for the credits provided to employers pursuant to subsection 5 of P.L.1966, c.113 (C.34:11-56a4).

b. The commissioner, in consultation with the State Treasurer, shall, not later than September 30, 2024, issue and post on the Department of Labor and Workforce Development website a report which evaluates the impacts on employers and employees of the tax credits provided in calendar years 2019 through 2023 to employers of employees with impairments pursuant to sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18). The report will include recommendations regarding the continuation of the tax credits.

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34:11-56a5. Administrative regulations; publication; duration

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 the 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.

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

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.

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34:11-56a7. Investigation of occupation

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.

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34:11-56a8. Appointment of wage board; report upon establishment of minimum fair wage rates

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.

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34:11-56a9. Wage board; membership; quorum; rules and regulations; compensation

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 occupations 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.

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34:11-56a10. Powers of wage board

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.

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34:11-56a11. Presentation of evidence and information to wage board; witnesses

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.

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

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.

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34:11-56a13. Recommendations of wage board

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.

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

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.

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34:11-56a15. Acceptance or rejection of report by commissioner

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.

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34:11-56a16. Approval or disapproval of report following public hearing; effective date of wage order

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.

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34:11-56a17. Special certificates or licenses for employment at wages less than minimum

(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 or minimum wage 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 wage rates and for such period of time as shall be fixed by the commissioner or the director and stated in the license.

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34:11-56a18. Modification of wage order

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.

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34:11-56a19. Additions or modifications to administrative regulations; hearing; notice

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 regulation. 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 of or additions to the administrative regulations as he deems appropriate.

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34:11-56a20. Record by employer of hours worked and wages; inspection; exceptions

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, milk or other perishable commodities in their natural or raw state, homeworkers legally employed in accordance with the laws of this State or any person employed in a bona fide executive, administrative or professional capacity, except that no exemption from record keeping pursuant to this section in regard to any person employed in a bona fide executive, administrative or professional capacity shall be construed to permit an employer to pay wages at a rate which violates the provisions of section 5 of P.L.1966, c. 113 (C. 34:11-56a4).

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

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.

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

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 disorderly persons offense and shall, upon conviction for a first violation, be punished by a fine of not less than $100 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 and, upon conviction for a second or subsequent violation, be punished by a fine of not less than $500 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. 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.

As an alternative to or in addition to any other sanctions provided by law for violations of the "New Jersey State Wage and Hour Law," P.L.1966, c. 113 (C.34:11-56a et seq.), when the Commissioner of Labor finds that an individual has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of $250 for a first violation and up to a maximum of $500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period.

Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

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34:11-56a23. Supervision by commissioner of payments of amounts due employees

As an alternative to any other sanctions or in addition thereto, herein or otherwise provided by law for violation of this act or of any rule or regulation duly issued hereunder, the Commissioner of Labor 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. The employer shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner pursuant to this section. The

amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). The fee shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

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34:11-56a24. Discharge or discrimination against employee making complaint; penalties for violations

a. Any employer who takes a retaliatory action against any employee by discharging or in any other manner discriminating against the employee because the employee has made any complaint to his employer, to the commissioner, the director or to their authorized representatives, or to a representative of the employee, 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, or because the employee has informed any employee of the employer about rights under State laws regarding wages and hours of work, shall be guilty of a disorderly persons offense and shall, upon conviction for a first violation, be fined not less than $500 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 and, upon conviction for a second or subsequent violation, be punished by a fine of not less than $1,000 nor more than $2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment. The employer shall also be required, as a condition of such judgment of conviction, to offer reinstatement in employment to the 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 and an additional amount of liquidated damages equal to not more than 200 percent of the wages lost, under penalty of contempt proceedings for failure to comply with such requirement. Taking an adverse action against an employee within ninety days of the employee filing a complaint with the commissioner, or a claim or action being brought by or on behalf of the employee in a court of competent jurisdiction, for a violation of P.L.1966, c.113 (C.34:11-56a et seq.) shall be considered presumptive evidence that the employer’s action was knowingly taken in retaliation against the employee. An employee complaint or other communication need not make explicit reference to any section or provision of State law regarding wages or hours worked to trigger the protections of this section.

b. As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1966, c.113 (C.34:11-56a et seq.), when the Commissioner of Labor and Workforce Development finds that an employer has violated that act, or taken any retaliatory action against the employee in violation of subsection a. of this section, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of $250 for a first violation and up to a maximum of $500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor and Workforce Development provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15 -day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

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34:11-56a25. Civil action by employee to recover wages, additional amount

26. If any employee is paid by an employer less than the minimum fair wage to which the employee is entitled under the provisions of P.L.1966, c.113 (C.34:11-56a et seq.) or by virtue of a minimum fair wage order, or suffers a loss of wages or other damages because of a retaliatory action by the employer in violation of the provisions of section 24 of P.L.1966, c.113 (C.34:11-56a24), the employee may recover in a civil action the full amount of that minimum wage less any amount actually paid to him or her by the employer, or any wages lost due to the retaliatory action, and an additional amount equal to not more than 200 percent of the amount of the unpaid minimum wage or wages lost due to retaliatory action as liquidated damages, plus costs and reasonable attorney's fees as determined by the court, except that if there is an agreement of the employee to accept payment of the unpaid wages or compensation supervised by the commissioner pursuant to section 24 of P.L.1966, c.113 (C.34:11-56a23) or R.S.34:11-58, the liquidated damages shall be equal to not more than 200 percent of wages that were due prior to the supervised payment. The payment of liquidated damages shall not be required for a first violation by an employer if the employer shows to the satisfaction of the court that the act or omission constituting the violation was an inadvertent error made in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation, and the employer acknowledges that the employer violated the law and pays the amount owed within 30 days of notice of the violation. In a case of retaliation against an employee in violation of the provisions of section 24 of P.L.1966, c.113 (C.34:11-56a24), the employer shall also be required to offer reinstatement in employment to the discharged employee, and take other actions as needed to correct the retaliatory action. For purposes of this section, an employer taking an adverse action against an employee within 90 days of the employee filing a complaint with the commissioner or a claim or action being brought by or on behalf of the employee in a court of competent jurisdiction for a violation of P.L.1966, c.113 (C.34:11 -56a et seq.) shall raise a presumption that the employer's action was taken in retaliation against the employee, which presumption may be rebutted only by clear and convincing evidence that the action was taken for other, permissible, reasons. Any agreement between the employee and the employer to work for less than the minimum fair wage shall be no defense to the action. An employee shall be entitled to maintain the action for and on behalf of himself or other employees similarly situated, and the employee and employees may designate an agent or representative to maintain the action for and on behalf of all employees similarly situated. The employee may bring the action to recover unpaid minimum wages, or wages lost due to retaliatory action, or other appropriate relief, including reinstatement and payment of damages pursuant to this section, in the Superior Court.

At the request of any employee paid less than the minimum wage to which the employee was entitled under the provisions of P.L.1966, c.113 (C.34:11-56a et seq.) 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 to the employee the unpaid wages and liquidated damages equal to not more than 200 percent the amount of the unpaid wages and pay to the commissioner the costs and reasonable attorney's fees as determined by the court. The payment of liquidated damages shall not be required for a first violation by an employer if the employer shows to the satisfaction of the court that the act or omission constituting the violation was an inadvertent error made in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation, and the employer acknowledges that the employer violated the law and pays the amount owed within 30 days of notice of the violation.

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34:11-56a25.1. Limitations; commencement of action

1. No claim for unpaid minimum wages, unpaid overtime compensation, unlawful discharge or other discriminatory acts taken in retaliation against the employee, or other damages under this act shall be valid with respect to any such claim which has arisen more than six years prior to the commencement of an action for the recover y thereof. In determining when an action is commenced, the action shall be considered to be commenced on the date when a complaint is filed with the Commissioner of the Department of Labor and Workforce Development or the Director of Wage and Hour Compliance, and notice of such complaint is served upon the employer; or, where an audit by the Department of Labor and Workforce Development 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 Wage and Hour Compliance; or where a cause of action is commenced in a court of appropriate jurisdiction.

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34:11-56a25.2. Defense to action

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.

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

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.

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34:11-56a27. Partial invalidity

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.

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34:11-56a28. Supplementation of provisions of Minimum Wage Standards Act

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.

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34:11-56a29. Short title

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

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34:11-56a30. Application of act to minors

Except with respect to the minimum wage rates established by P.L.1966, c. 113, s. 5, the provisions of the "New Jersey State Wage and Hour Law," P.L.1966, c. 113 (C. 34:11-56a1 et seq.) are applicable to the employment of minors. Wage orders pertaining to minors including those promulgated under R.S. 34:11-34 through R.S. 34:11-56, on the effective date of this act shall remain in force until superseded by wage orders or regulations issued pursuant to P.L.1966, c. 113.

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34:11-56a31. Establishment of maximum work week for certain health care facility employees

It is declared to be the public policy of this State to establish a maximum work week for certain hourly wage health care facility employees, beyond which the employees cannot be required to perform overtime work, in order to safeguard their health, efficiency, and general well-being as well as the health and general well-being of the persons to whom these employees provide services.

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34:11-56a32. Definitions relative to work hours for certain health care facility employees

As used in this act:

"Employee" means an individual employed by a health care facility who is involved in direct patient care activities or clinical services and who receives an hourly wage, but shall not include a physician.

"Employer" means an individual, partnership, association, corporation or person or group of persons acting directly or indirectly in the interest of a health care facility.

"Health care facility" means a health care facility licensed by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

"On-call time" means time spent by an employee who is not currently working on the premises of the place of employment, but who is compensated for availability, or as a condition of employment has agreed to be available, to return to the premises of the place of employment on short notice if the need arises.

"Reasonable efforts" means that the employer shall: a. seek persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergent circumstance; b. contact all qualified employees who have made themselves available to work extra time; c. seek the use of per diem staff; and d. seek personnel from a contracted temporary agency when such staff is permitted by law or regulation.

"Unforeseeable emergent circumstance" means an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action.

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34:11-56a33. Excessive work shift contrary to public policy

The requirement that an employee of a health care facility accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week, except in the case of an unforeseeable emergent circumstance when the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing and the employer has exhausted reasonable efforts to obtain staffing, is declared to be contrary to public policy and any such requirement contained in any contract, agreement or understanding executed or renewed after the effective date of this act shall be void.

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34:11-56a34. Health care facility employee work shift determined; exceptions voluntary

(a) Notwithstanding any provision of law to the contrary, no health care facility shall require an employee to accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week.

(b) The acceptance by any employee of such work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week, shall be strictly voluntary and the refusal of any employee to accept such overtime work shall not be grounds for discrimination, dismissal, discharge or any other penalty or employment decision adverse to the employee.

(c) The provisions of this section shall not apply in the case of an unforeseeable emergent circumstance when: (1) the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing, and (2) the employer has exhausted reasonable efforts to obtain staffing. In the event of such an unforeseeable emergent circumstance, the employer shall provide the employee with necessary time, up to a maximum of one hour, to arrange for the care of the employee's minor children or elderly or disabled family members.

The requirement that the employer shall exhaust reasonable efforts to obtain staffing shall not apply in the event of any declared national, State or municipal emergency or a disaster or other catastrophic event which substantially affects or increases the need for health care services.

(d) In the event that an employer requires an employee to work overtime pursuant to subsection c. of this section, the employer shall document in writing the reasonable efforts it has exhausted. The documentation shall be made available for review by the Department of Health and Senior Services and the Department of Labor.

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34:11-56a35. Violations, sanctions

An employer who violates the provisions of this act shall be subject to the sanctions provided by law for violations of the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.).

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34:11-56a36. Construction, applicability of act

(a) The provisions of this act shall not be construed to impair or negate any employer-employee collective bargaining agreement or any other employer-employee contract in effect on the effective date of this act.

(b) The provisions of this act shall not apply to employees of assisted living facilities licensed by the Department of Health and Senior Services who are provided with room and board as a benefit of their employment and reside in the facility on a full-time basis.

(c) The provisions of this act shall not apply to on-call time, but nothing in this act shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

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34:11-56a37. Collection of data relative to mandatory overtime prohibition, report

The Departments of Health and Senior Services, Human Services, and Law and Public Safety shall each collect data from all health care facilities which the respective department licenses, operates or regulates, as to the potential impact of the mandatory overtime prohibition on employee availability and other considerations, and shall jointly report their findings to the Senate and General Assembly Health Committees within 18 months of the date of enactment of this act.

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34:11-56a38. Rules, regulations

The Commissioner of Health and Senior Services, in consultation with the Attorney General and the Commissioners of Human Services and Labor, shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), within six months of the date of enactment of this act, to carry out the purposes of this act.

[[1] Mandatory Overtime Regulations are contained in N.J.A.C. 8:43E-8.]

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34:11-56a39. Definitions relative to C:34:11-56a39 et al

5. As used in sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18):

"Commissioner" means the Commissioner of Labor and Workforce Development.

"Employee with an impairment" means an employee earning at least the minimum wage on the effective date of P.L.2019, c.32 (C.34:11-56a4.9 et al.) whose work capacity is significantly impaired by age or physical or mental deficiency or injury and who, based on a determination by the State, is found eligible for personal assistance services or prescribed drugs because without such services or drugs the individual would be unable to perform the essential functions of the employment position that the individual holds.

"Employer" means any nongovernmental business entity including, but not limited to, a nonprofit organization, a corporation, S corporation, limited liability company, partnership, limited partnership, and sole proprietorship, and shall include all entities related by common ownership or control.

"Tax year" means the calendar year or fiscal year in which a taxpayer's gross income tax or corporation business tax liability is due and payable.

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34:11-56a40. Tax credit program to employers of employees with impairments.

6. a. There is established in the Department of Labor and Workforce Development a program, administered by the commissioner, to provide tax credits to employers of employees with impairments. The purpose of the program is to provide tax credits to employers of employees with impairments to help to offset the cost to the employer of any wage increases for those employees caused by the enactment of P.L.2019, c.32 (C.34:11-56a4.9 et al.), including the cost to the employer of corresponding increases in payroll taxes that the employer paid on those workers' wages.

b. Prior to January 1, 2025, an employer subject to the provisions of subsections a. and e. of section 5 of P.L 1966, c.113 (C.34:11-56a4) may apply to the commissioner for an award of tax credits under this section. A tax credit allowed pursuant to this section shall be in the amount provided in subsections d. and e. of this section against the corporation business tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or the gross income tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., whichever of the two taxes is applicable to the employer.

c. Prior to January 1, 2028, an employer subject to the provisions of subsections c. and d. of section 5 of P.L 1966, c.113 (C.34:11-56a4) may apply to the commissioner for an award of tax credits under this section. A tax credit allowed pursuant to this section shall be in the amount provided in subsections d. and e. of this section against the corporation business tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or the gross income tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., whichever of the two taxes is applicable to the employer.

d. (1) The final amount of the tax credit provided to an employer for employees with impairments employed by the employer during a tax year shall be a preliminary amount of the tax credit, which is the amount by which the wages and payroll taxes which the employer is required to pay each employee with an impairment the employer employs pursuant to P.L.2019, c.32 (C.34:11-56a4.9 et al.) during the tax year exceeds the amount that the employer actually paid for the employee with an impairment in wages and payroll taxes in the last preceding calendar year (as adjusted pursuant to subparagraph (c) of this paragraph), provided that:

(a) if the number of hours worked during the tax year by an employee with an impairment employed by the employer is equal to the number of hours the employee with an impairment worked for the employer during the last preceding calendar year, then the preliminary amount of the tax credit for each of the hours worked shall be in the amount that remains after the amount actually paid for the employee with an impairment in wages and payroll taxes during the last preceding calendar year (as adjusted pursuant to subparagraph (c) of this paragraph) is subtracted from the amount which is required to be paid for the employee with an impairment in payroll taxes and in wages pursuant to the minimum wage rate which applies to the tax year pursuant to P.L.2019, c.32 (C.34:11-56a4.9 et al.);

(b) if the number of hours worked during the tax year by an employee with an impairment employed by the employer is greater than the number of hours worked by the employee with an impairment employed by the employer during the last preceding calendar year, then the preliminary amount of the

tax credit shall be calculated in two parts and the sum of the two parts shall be the preliminary amount of the tax credit. In the first part of the calculation, regarding the hours worked during the tax year which are equal to the number of hours worked during the last preceding calendar year, the preliminary amount of the tax credit shall be calculated in the same manner as the credit is calculated in subparagraph (a) of this paragraph. In the second part of the calculation, regarding the hours worked during the tax year which are in addition to the number of hours worked during the last preceding calendar year, the preliminary amount of the tax credit for each additional hour shall be calculated in the same manner as the credit is calculated in subparagraph (a) of this paragraph, except that it shall be presumed that the additional number of hours worked by the employee with an impairment would have been paid at the minimum wage rate in effect during the last preceding calendar year (as adjusted pursuant to subparagraph (c) of this paragraph), and the preliminary amount of the tax credit for each of those hours of work shall be calculated by subtracting that presumed rate from the actual minimum wage rate for the tax year; and

(c) In making any of the calculations in this paragraph, the actual rate of pay paid to an employee with an impairment in the preceding calendar year shall be increased by whichever is the larger of:

(i) the increase in the State minimum wage that would have occurred, for the applicable tax year, if P.L.2019, c.32 (C.34:11-56a4.9 et al.) had not been enacted; or

(ii) any increase in the federal minimum hourly wage rate set for the applicable tax year pursuant to section 6(a)(1) of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206(a)(1)).

(2) If the number of hours worked during the tax year by an employee with an impairment employed by the employer is less than the number of hours worked during the last preceding calendar year, then the employer shall not be eligible for a tax credit under this section for that tax year for that employee with an impairment.

e. An employer may qualify for a tax credit pursuant to sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18) in a taxable year or privilege period beginning on or after January 1, 2019. An employer who qualifies for a tax credit pursuant to this section with respect to hours worked during a tax year may use the tax credit when determining the employer's estimated tax for the purpose of making installment payments of the tax during that tax year. The commissioner shall, upon request, provide assistance to the employer in estimating the likely amount of the tax credit to assist the employer in determining the amount of the tax credit and the installment payments of the tax during a tax year. For tax years 2019 and 2020, the Director of the Division of Taxation may waive in part, or entirely, penalties for underpayment of taxes in connection with installment payments to the extent that the director finds that the underpayment occurred because of a good faith error of the employer in calculating the amount of the credit. Any misclassification of an employee by an employer who knowingly, in applying for the tax credit, falsely represents an employee as an employee with an impairment shall be regarded as a violation of the applicable State tax law and shall be subject to three times the amount of penalties otherwise provided in that law for violations of the law and, for that violation, the penalty shall not be waived, including during tax years 2019 and 2020.

f. An employer shall not be eligible for a tax credit pursuant to sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18) if the commissioner determines that the employer reduced the wages that the employer paid to any employee with an impairment employed by the employer to be eligible for a tax credit under sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18) in a future year.

g. The combined value of all tax credits approved annually by the commissioner pursuant to this section shall not exceed $10,000,000 in a calendar year. The commissioner shall annually review and report to the Legislature in accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1) on the sufficiency of the tax credit cap authorized pursuant to this subsection and have any recommendations with respect thereto to the Legislature.

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34:11-56a41. Regulations

7. a. Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the commissioner, in consultation with the State Treasurer, may adopt, upon filing with the Office of Administrative Law, such regulations that the commissioner deems necessary to implement the provisions of sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18), which regulations shall be effective for a period not to exceed 180 days

from the date of the filing. The commissioner shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.). The regulations adopted by the commissioner shall include the following:

(1) standards and procedures for determining which employees are employees with impairments for the purpose of determining the eligibility of employers for tax credits;

(2) any additions to, or modifications of, wage record-keeping requirements needed to calculate the amounts of tax credits under sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18);

(3) continuing to provide the calculation, for each year, of what the minimum wage would have been under section 5 of P.L.1966 (C.34:11-56a4) and paragraph 23 of Article I of the New Jersey Constitution if P.L.2019, c.32 (C.34:11-56a4.9 et al.) had not been enacted; and

(4) a method for employers to submit certificates of credit to the Division of Taxation pursuant to sections 8 and 9 of P.L.2019, c.32 (C.54:10A-5.42 and C.54A:4-18).

b. Beginning the year next following the year in which P.L.2019, c.32 (C.34:11-56a4.9 et al.) takes effect and every two years thereafter, the commissioner shall prepare a report concerning the award of tax credits under sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18), and submit the report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature. Each biennial report required under this subsection shall include the names and locations of, and the amount of tax credits allowed to, each employer allowed a tax credit under sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18).

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TITLE 54 TAXATION

54:10A-5.42. Credit against corporation business tax

8 a. The Director of the Division of Taxation in the Department of the Treasury shall allow an employer a credit against the corporation business tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in the amount certified by the Commissioner of Labor and Workforce Development as the taxpayer’s tax credit amount pursuant to section 6 of P.L.2019, c.32 (C.34:11-56a40). To claim the tax credit amount for a privilege period, the taxpayer shall submit to the director the certificate of credit issued for that privilege period by the commissioner pursuant to section 6 of P.L.2019, c.32 (C.34:11-56a40).

b. An employer shall apply the credit awarded against the employer’s liability under section 5 of P.L.1945, c.162 (C.54:10A-5) for the privilege period during which the director allows the employer a tax credit pursuant to this section. An employer shall not carry forward an unused credit.

c. The director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed under section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5).

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TITLE 54A NEW JERSEY GROSS INCOME TAX ACT

54A:4-18. Credit against gross income tax

9. a. The Director of the Division of Taxation in the Department of the Treasury shall allow an employer a credit against the gross income tax imposed pursuant to the "New Jersey Gross Income Tax Act" N.J.S.54A:1-1 et seq. in the amount certified by the Commissioner of Labor and Workforce Development as the taxpayer’s tax credit amount pursuant to section 6 of P.L.2019, c.32 (C.34:11-56a40). To claim the tax credit amount for a taxable year, the taxpayer shall submit to the director the certificate of credit issued for that taxable year by the commissioner pursuant to section 6 of P.L.2019, c.32 (C.34:11-56a40).

b. An employer shall apply the credit awarded against the employer's liability under the "New Jersey Gross Income Tax Act" N.J.S.54A:1-1 et seq. for the taxable year during which the director allows the employer a tax credit pursuant to this section. An employer shall not carry forward an unused credit.

c. The director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed under the "New Jersey Gross Income Tax Act" N.J.S.54A:1-1 et seq. The amount of the credit applied under this section against the tax imposed pursuant to the "New Jersey Gross Income Tax Act" N.J.S.54A:1-1 et seq. for a taxable year, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than zero. No tax credit shall be allowed pursuant to this section for any wages and payroll taxes included in the calculation of any other tax credit granted pursuant to a claim made on a tax return filed with the director for a period of time that coincides with the taxable year for which a tax credit authorized pursuant to this section is allowed.

d. A business entity that is classified as a partnership for federal income tax purposes shall not be allowed the tax credit directly under N.J.S.54A:1-1 et seq., but the amount of credit of the taxpayer in respect of a distributive share of partnership income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the partnership that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership for its taxable year ending within or with the taxpayer's taxable year.

e. A taxpayer that is a New Jersey S corporation shall not be allowed the tax credit directly under N.J.S.54A:1-1 et seq., but the amount of credit of a taxpayer in respect of a pro-rata share of S corporation income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the New Jersey S corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro-rata share of S corporation income of the New Jersey S corporation for its privilege period ending within or with the taxpayer's taxable year.

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CHAPTER 11D EARNED SICK LEAVE (Effective October 29, 2018)

34:11D-1 Definitions relative to earned sick leave

For the purposes of this act:

"Benefit year" means the period of 12 consecutive months established by an employer in which an employee shall accrue and use earned sick leave as provided pursuant to section 2 of this act, provided that once the starting date of the benefit year is established by the employer it shall not be changed unless the employer notifies the commissioner of the change in accordance with regulations promulgated pursuant to this act. The commissioner shall impose a benefit year on any employer that the commissioner determines is changing the benefit year at times or in ways that prevent the accrual or use of earned sick leave by an employee.

"Certified Domestic Violence Specialist" means a person who has fulfilled the requirements of certification as a Domestic Violence Specialist established by the New Jersey Association of Domestic Violence Professionals.

"Child" means a biological, adopted, or foster child, stepchild or legal ward of an employee, child of a domestic partner or civil union partner of the employee.

"Civil union" means a civil union as defined in section 2 of P.L.2006, c.103 (C.37:1-29).

"Commissioner" means the Commissioner of Labor and Workforce Development.

"Department" means the Department of Labor and Workforce Development.

"Designated domestic violence agency" means a county-wide organization with a primary purpose to provide services to victims of domestic violence, and which provides services that conform to the core domestic violence services profile as defined by the Division of Child Protection and Permanency in the Department of Children and Families and is under contract with the division for the express purpose of providing the services.

"Domestic or sexual violence" means stalking, any sexually violent offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-27.26), or domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19) and section 1 of P.L.2003, c.41 (C.17:29B-16).

"Domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

"Employee" means an individual engaged in service to an employer in the business of the employer for compensation. “Employee” does not include an employee performing service in the construction industry that is under contract pursuant to a collective bargaining agreement, or a per diem health care employee, or a public employee who is provided with sick leave with full pay pursuant to any other law, rule, or regulation of this State.

"Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company or other entity that employs employees in the State, including a temporary help service firm. In the case of a temporary help service firm placing an employee with client firms, earned sick leave shall accrue on the basis of the total time worked on assignment with the temporary help service firm, not separately for each client firm to which the employee is assigned. "Employer" does not include a public employer that is required to provide its employees with sick leave with full pay pursuant to any other law, rule or regulation of this State.

"Family member" means a child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, or grandparent of an employee, or a spouse, domestic partner, or civil union partner of a parent or grandparent of the employee, or a sibling of a spouse, domestic partner, or civil union partner of the employee, or any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.

“Health care professional” means any person licensed under federal, State, or local law, or the laws of a foreign nation, to provide health care services, or any other person who has been authorized to provide health care by a licensed health care professional, including but not limited to doctors, nurses and emergency room personnel.

“Parent” means a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or of the employee’s spouse, domestic partner, or civil union partner, or a person who stood in loco parentis of the employee or the employee’s spouse, domestic partner, or civil union partner when the employee, spouse or partner was a minor child.

“Per diem health care employee” means any:

(1) health care professional licensed in the State of New Jersey employed by a health care facility licensed by the New Jersey Department of Health;

(2) any individual that is in the process of applying to the New Jersey Division of Consumer Affairs for a license to provide health care services who is employed by a health care facility licensed by the New Jersey Department of Health; or

(3) any first aid, rescue or ambulance squad member employed by a hospital system.

An employee listed in paragraphs (1), (2), and (3) of this definition shall be considered a per diem health care employee if that employee:

(1) works on an as-needed basis to supplement a health care employee, or to replace or substitute for a temporarily absent health care employee;

(2) works only when the employee indicates that the employee is available to work, and has no obligation to work when the employee does not indicate availability; and

(3) either:

(a) has the opportunity for full time or part time employment in their scope of practice under that healthcare provider which offers paid time off benefits greater in length than provided under this act under the terms of employment; or

(b) has waived earned sick leave benefits as provided under this act under terms of employment for alternative benefits or consideration.

“Per diem health care employee” shall not include any individual who is certified as a homemaker-home health aide.

“Retaliatory personnel action” means denial of any right guaranteed under this act and any threat, discharge, including a constructive discharge, suspension, demotion, unfavorable reassignment, refusal to promote, disciplinary action, sanction, reduction of work hours, reporting or threatening to report the actual or suspected immigrant status of an employee or the employee’s family, or any other adverse action against an employee.

“Sibling” means a biological, foster, or adopted sibling of an employee.

"Spouse" means a husband or wife.

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34:11D-2 Provision of earned sick leave by employer

a. Each employer shall provide earned sick leave to each employee working for the employer in the State. For every 30 hours worked, the employee shall accrue one hour of earned sick leave, except that an employer may provide an employee with the full complement of earned sick leave for a benefit year, as required under this section, on the first day of each benefit year in accordance with subsection c. or subsection d. of section 3 of this act. The employer shall not be required to permit the employee to accrue or use in any benefit year, or carry forward from one benefit year to the next, more than 40 hours of earned sick leave. Unless the employee has accrued earned sick leave prior to the effective date of this act, the earned sick leave shall begin to accrue on the effective date of this act for any employee who is hired and commences employment before the effective date of this act and the employee shall be eligible to use the earned sick leave beginning on the 120th calendar day after the employee commences employment, and if the employment commences after the effective date of this act, the earned sick leave shall begin to accrue upon the date that employment commences and the employee shall be eligible to use the earned sick leave beginning on the 120th calendar day after the employee commences employment, unless the employer agrees to an earlier date. The employee may subsequently use earned sick leave as soon as it is accrued.

b. An employer shall be in compliance with this section if the employer offers paid time off, which is fully paid and shall include, but is not limited to personal days, vacation days, and sick days, and may be used for the purposes of section 3 of this act in the manner provided by this act, and is accrued at a rate equal to or greater than the rate described in this section.

c. The employer shall pay the employee for earned sick leave at the same rate of pay with the same benefits as the employee normally earns, except that the pay rate shall not be less than the minimum wage required for the employee pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4).

d. Upon the mutual consent of the employee and employer, an employee may voluntarily choose to work additional hours or shifts during the same or following pay period, in lieu of hours or shifts missed, but shall not be required to work additional hours or shifts or use accrued earned sick leave. An employer may not require, as a condition of an employee's using earned sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned sick leave.

e. If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, then the employee shall be entitled to all earned sick leave accrued at the prior division, entity, or location, and shall be entitled to use the accrued earned sick leave as provided in this act. If an employee is terminated, laid off, furloughed, or otherwise separated from employment with the employer, any unused accrued earned sick leave shall be reinstated upon the re-hiring or reinstatement of the employee to that employment, within six months of termination, being laid off or furloughed, or separation, and prior employment with the employer shall be counted towards meeting the eligibility requirements set forth in this section. When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all of the earned sick leave they accrued when employed by the original employer, and are entitled to use the earned sick leave previously accrued immediately.

f. An employer may choose the increments in which its employees may use earned sick leave, provided that the largest increment of earned sick leave that an employee may be required to use for each shift for which earned sick leave is used shall be the number of hours the employee was scheduled to work during that shift.

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34:11D-3 Permitted usage of earned sick leave

a. An employer shall permit an employee to use the earned sick leave accrued pursuant to this act for any of the following:

(1) time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury or other adverse health condition, or for preventive medical care for the employee;

(2) time needed for the employee to aid or care for a family member of the employee during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury or other adverse health condition, or during preventive medical care for the family member;

(3) absence necessary due to circumstances resulting from the employee, or a family member of the employee, being a victim of domestic or sexual violence, if the leave is to allow the employee to obtain for the employee or the family member: medical attention needed to recover from physical or psychological injury or disability caused by domestic or sexual violence; services from a designated domestic violence agency or other victim services organization; psychological or other counseling; relocation; or legal services, including obtaining a restraining order or preparing for, or participating in, any civil or criminal legal proceeding related to the domestic or sexual violence;

(4) time during which the employee is not able to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, by order of a public official due to an epidemic or other public health emergency, or because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others; or

(5) time needed by the employee in connection with a child of the employee to attend a school-related conference, meeting, function or other event requested or required by a school administrator, teacher, or other professional staff member responsible for the child's education, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability.

b. If an employee's need to use earned sick leave is foreseeable, a employer may require advance notice, not to exceed seven calendar days prior to the date the leave is to begin, of the intention to use the leave and its expected duration, and shall make a reasonable effort to schedule the use of earned sick leave in a manner that does not unduly disrupt the operations of the employer. If the reason for the leave is not foreseeable, an employer may require an employee to give notice of the intention as soon as practicable, if the employer has notified the employee of this requirement. Employers may prohibit employees from using foreseeable earned sick leave on certain dates, and require reasonable documentation if sick leave that is not foreseeable is used during those dates. For earned sick leave of three or more consecutive days, an employer may require reasonable documentation that the leave is being taken for the purpose permitted under subsection a. of this section. If the leave is permitted under paragraph (1) or (2) of subsection a. of this section, documentation signed by a health care professional who is treating the employee or the family member of the employee indicating the need for the leave and, if possible, number of days of leave, shall be considered reasonable documentation. If the leave is permitted under paragraph (3) of subsection a. of this section because of domestic or sexual violence, any of the following shall be considered reasonable documentation of the domestic or sexual violence: medical documentation; a law enforcement agency record or report; a court order; documentation that the perpetrator of the domestic or sexual violence has been convicted of a domestic or sexual violence offense; certification from a certified Domestic Violence Specialist or a representative of a designated domestic violence agency or other victim services organization; or other documentation or certification provided by a social worker, counselor, member of the clergy, shelter worker, health care professional, attorney, or other professional who has assisted the employee or family member in dealing with the domestic or sexual violence. If the leave is permitted under paragraph (4) of subsection a. of this section, a copy of the order of the public official or the determination by the health authority shall be considered reasonable documentation.

c. Nothing in this act shall be deemed to require an employer to provide earned sick leave for an employee's leave for purposes other than those identified in this section, or prohibit the employer from taking disciplinary action against an employee who uses earned sick leave for purposes other than those identified in this section. An employer may provide an offer to an employee for a payment of unused earned sick leave in the final month of the employer's benefit year. The employee shall choose, no later than 10 calendar days from the date of the employer's offer, whether to accept a payment or decline a payment. If the employee agrees to receive a payment, the employee shall choose a payment for the full amount of unused earned sick leave or for 50 percent of the amount of unused earned sick leave. The payment amount shall be based on the same rate of pay that the employee earns at the time of the payment. If the employee declines a payment for unused earned sick leave, or agrees to a payment for 50 percent of the amount of unused sick leave, the employee shall be entitled to carry forward any unused or unpaid earned sick leave to the proceeding benefit year as provided pursuant to subsection a. of section 2 of this act. If the employee agrees to a payment for the full amount of unused earned sick leave, the employee shall not be entitled to carry forward any earned sick leave to the proceeding benefit year pursuant to subsection a. of section 2 of this act.

d. If an employer foregoes the accrual process for earned sick leave hours pursuant to subsection a. of section 2 of this act and provides an employee with the full complement of earned sick leave for a benefit year on the first day of each benefit year, then the employer shall either provide to the employee a payment for the full amount of unused earned sick leave in the final month of the employer's benefit year or carry forward any unused sick leave to the next benefit year. The employer may pay the employee the full amount of unused earned sick leave in the final month of a benefit year pursuant to this subsection only if the employer forgoes, with respect to that employee, the accrual process for earned sick leave during the next benefit year. Unless an employer policy or collective bargaining agreement provides for the payment of accrued earned sick leave upon termination, resignation, retirement or other separation from employment, an employee shall not be entitled under this section to payment of unused earned sick leave upon the separation from employment.

e. Any information an employer possesses regarding the health of an employee or any family member of the employee or domestic or sexual violence affecting an employee or employee's family member shall be treated as confidential and not disclosed except to the affected employee or with the written permission of the affected employee.

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34:11D-4 Retaliation, discrimination prohibited

4. a. No employer shall take retaliatory personnel action or discriminate against an employee because the employee requests or uses earned sick leave either in accordance with this act or the employer's own earned sick leave policy, as the case may be, or files a complaint with the commissioner alleging the employer's violation of any provision of this act, or informs any other person of their rights under this act. No employer shall count earned sick leave taken under this act as an absence that may result in the employee being subject to discipline, discharge, demotion, suspension, a loss or reduction of pay, or any other adverse action.

b. There shall be a rebuttable presumption of an unlawful retaliatory personnel action under this section whenever an employer takes adverse action against an employee within 90 days of when that employee: files a complaint with the department or a court alleging a violation of any provision of this section; informs any person about an employer's alleged violation of this section; cooperates with the department or other persons in the investigation or prosecution of any alleged violation of this section; opposes any policy, practice, or act that is unlawful under this section; or informs any person of his or her rights under this section.

c. Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this act.

d. Any violator of the provisions of this section shall be subject to relevant penalties and remedies provided by the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), including the penalties and remedies provided by section 25 of that act (C.34:11-56a24), and relevant penalties and remedies provided by section 10 of P.L.1999, c.90 (C.2C:40A-2), for discharge or other discrimination.

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34:11D-5 Violations; remedies, penalties, other measures

5. Any failure of an employer to make available or pay earned sick leave as required by this act, or any other violation of this act, shall be regarded as a failure to meet the wage payment requirements of the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of that act, as the case may be, and remedies, penalties, and other measures provided by that act, R.S.34:11-58, and section 10 of P.L.1999, c.90 (C.2C:40A-2) for failure to pay wages or other violations of that act shall be applicable, including, but not limited to, penalties provided pursuant to sections 23 and 25 of that act (C.34:11-56a22 and 34:11-56a24), and civil actions by employees pursuant to section 26 of that act (C.34:11-56a25), except that an award to an employee in a civil act shall include, in addition to the amount provided pursuant to section 26 of that act (C.34:11-56a25), any actual damages suffered by the employee as the result of the violation plus an equal amount of liquidated damages.

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34:11D-6 Retention of records, access

6. Employers shall retain records documenting hours worked by employees and earned sick leave taken by employees, for a period of five years, and shall, upon demand, allow the department access to those records to monitor compliance with the requirements of this act. If an employee makes a claim that the employer has failed to provide earned sick leave required by this act and the employer has not maintained or retained adequate records documenting hours worked by the employee and earned sick leave taken by the employee or does not allow the department access to the records, it shall be presumed that the employer has failed to provide the earned sick leave, absent clear and convincing evidence otherwise. In addition, the penalties provided by the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.) for violations of the requirements of that act regarding the maintaining and disclosure of records shall apply to violations of the requirements of this section.

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34:11D-7 Notification to employees

7. a. Employers shall provide notification, in a form issued by the commissioner, to employees of their rights under this act, including the amount of earned sick leave to which they are entitled and the terms of its use, and remedies provided by this act to employees if an employer fails to provide the required benefits or retaliates against employees exercising their rights under this act. Each covered employer shall conspicuously post the notification in a place or places accessible to all employees in each of the employer's workplaces. The employer shall also provide each employee employed by the employer with a written copy of the notification: not later than 30 days after the form of the notification is issued; at the time of the employee's hiring, if the employee is hired after the issuance; and at any time, when first requested by the employee. The commissioner shall make the notifications available in English, in Spanish, and any other language that the commissioner determines is the first language of a significant number of workers in the State and the employer shall use the notification in English, Spanish or any other language for which the commissioner has provided notifications and which is the first language of a majority of the employer's workforce.

b. The commissioner shall advise any employee who files a complaint pursuant to this section and is covered by a collective bargaining agreement, that if the agreement provides for earned sick leave, the employee may have a right to pursue a grievance under the terms of the agreement.

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34:11D-8 Provisions preemptive; construction of act

8. a. The governing body of a county or municipality shall not, after the effective date of this act, adopt any ordinance, resolution, law, rule, or regulation regarding earned sick leave. The provisions of this act shall preempt any ordinance, resolution, law, rule, or regulation regarding earned sick leave adopted by the governing body of a county or municipality.

b. No provision of this act, or any regulations promulgated to implement or enforce this act, shall be construed as:

(1) requiring an employer to reduce, or justifying an employer in reducing, rights or benefits provided by the employer pursuant to an employer policy or collective bargaining agreement which are more favorable to employees than those required by this act or which provide rights or benefits to employees not covered by this act;

(2) preventing or prohibiting the employer from agreeing, through a collective bargaining agreement or employer policy, to provide rights or benefits which are more favorable to employees than those required by this act or to provide rights or benefits to employees not covered by this act;

(3) prohibiting an employer from establishing a policy whereby an employee may donate unused accrued earned sick leave to another employee or other employees; or

(4) superseding any law providing collective bargaining rights for employees, or in any way reducing, diminishing, or adversely affecting those collective bargaining rights, or in any way reducing, diminishing, or affecting the obligations of employers under those laws.

Employees or employee representatives may waive the rights or benefits provided under this act during the negotiation of a collective bargaining agreement.

c. With respect to employees covered by a collective bargaining agreement in effect at the time of the effective date of this act, no provision of this act shall apply until the stated expiration of the collective bargaining agreement.

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34:11D-9 Severability

9. The provisions of this act shall be deemed to be severable and if any section, subsection, paragraph, sentence or other part of this act is declared to be unconstitutional, or the applicability thereof to any person is held invalid, the remainder of this act shall not thereby be deemed to be unconstitutional or invalid.

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34:11D-10 Development of multilingual outreach program

10. The commissioner shall develop and implement a multilingual outreach program to inform employees, parents, and persons under the care of health care providers about the availability of earned paid sick leave pursuant to this act. The program shall include the distribution of written materials in English, Spanish and any language that is the primary language of 10 percent or more of the registered voters in the State to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other healthcare providers. The commissioner shall, during each calendar year, allocate not less than $500,000 to the program, which shall be regarded as a cost of administration of temporary disability and family temporary disability benefits and be charged to the administration account of the State disability benefit fund, except that the allocation made pursuant to this subsection shall not result in the total amount credited to administrative costs exceeding the maximum amount permitted pursuant to subsection (a) of section 22 of P.L.1948, c.110 (C.43:21-46).

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34:11D-11 Rules, regulations

11. The commissioner shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the purposes of this act.

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CHAPTER 56 WAGE AND HOUR REGULATIONS
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.

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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.

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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 and Workforce Development 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 and Workforce Development, 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 and Workforce Development.

(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.

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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.

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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.

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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.

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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.

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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, 34:11-56a et seq.

"Commissioner" means the Commissioner of the Department of Labor and Workforce Development 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 and Workforce Development, 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, and the State and any county, municipality, or school district in the State, or any agency, authority, department, bureau, or instrumentality thereof, or any person, or group of persons, acting directly or indirectly in the interest of an employer in relation to an employee.

"Established employer on-the-job or other training program" means an existing on-the-job or other training program that, when completed by the employee, either results in the employee earning an industry-valued credential or results in the employee being awarded credit that may be directly applied toward the earning of an industry-valued credential.

"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.

"Seasonal employment" means employment during a year by an employer that is a seasonal employer, or employment by a non-profit or government entity of an individual who is not employed by that employer outside of the period of that year commencing on May 1 and ending September 30, or employment by a governmental entity in a recreational program or service during the period commencing on May 1 and ending September 30, except that "seasonal employment" does not include employment of employees engaged to labor on a farm on either a piece-rate or regular hourly rate basis.

"Seasonal employer" means an employer who exclusively provides its services in a continuous period of not more than 10 weeks during the months of June, July, August, and September, or an employer for which, during the immediately previous calendar year, not less than two-thirds of the employer's gross receipts were received in a continuous period of not more than 16 weeks or for which not less than 75 percent of the wages paid by the employer during the immediately preceding year were paid for work performed during a single calendar quarter.

'Small employer" means any employer who employed less than six employees for every working day during each of a majority of the calendar workweeks in the current calendar year and less than six employees for every working day during not less than 48 calendar workweeks in the preceding calendar year, except that, if the employer was newly established during the preceding calendar year, the employer shall be regarded as a "small employer" if the employer employed less than six employees for every working day during all of the weeks of that year, and during a majority of the calendar workweeks in the current calendar year, and, if the employer is newly established during the current calendar year, the employer shall be regarded as a "small employer" if the employer employed less than six employees for every working day during a majority of the calendar workweeks in the current calendar year.

"Tipped employee" means any employee engaged in an occupation in which he or she customarily and regularly receives more than $30.00 a month in tips. The definition of tipped employee does not require that the calendar month be used in determining whether more than $30.00 a month is customarily and regularly received as tips. Any appropriate recurring monthly period beginning on the same day of the calendar month may be used.

"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 the fair value of any food or lodgings supplied by an employer to an employee.

"Work hours" means the actual hours suffered or permitted to work.

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SUBCHAPTER 3. MINIMUM WAGE RATES

12:56-3.1 Statutory minimum wage rates for specific years

(a) Except as provided at N.J.A.C. 12:56-3.2, 3.3, 3.4, and 3.5, every employee shall, effective January 1, 2020, be paid not less than $ 11.00 per hour or the minimum wage rate set by section 6(a)(1) of the Federal "Fair Labor Standards Act of 1938" (29 U.S.C. § 206(a)(1), whichever is greater.

(b) For the period from January 1, 2020 through January 1, 2024, on an annual basis, on or about September 30, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above, so as to be the greater of either an amount based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics, or the following:

1. For January 1, 2020, $ 11.00;

2. For January 1, 2021, $ 12.00;

3. For January 1, 2022, $ 13.00;

4. For January 1, 2023, $ 14.00; and

5. For January 1, 2024, $ 15.00.

(c) Beginning January 1, 2025, on an annual basis, on or about September 30, the Department shall revise the minimum hourly wage set forth in (a) above based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics. Annually, the Department shall, through a public notice published in the New Jersey Register, provide the new CPI-W, U.S. City Average, adjusted minimum hourly wage.

(d) The Department shall, no later than September 30 of each year, publish a notice, as set forth in (b) and (c) above, on the Department's website, http://www.nj.gov/labor/.

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12:56-3.2 Statutory minimum wage rate for specific years; small and seasonal employees

(a) Except as provided at N.J.A.C. 12:56-3.3 and 3.4, every employee of a small employer and every employee who is engaged in seasonal employment shall, effective January 1, 2020, be paid not less than $ 10.30 per hour or the minimum wage rate set by section 6(a)(1) of the Federal Fair Labor Standards Act of 1938, 29 S.C. 206(a)(1), whichever is greater.

(b) For the period from January 1, 2020 through January 1, 2026, on an annual basis, on or about September 30, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above, so as to be the greater of either an amount based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics, or the following:

1. For January 1, 2020, $ 10.30;

2. For January 1, 2021, $ 11.10;

3. For January 1, 2022, $ 11.90;

4. For January 1, 2023, $ 12.70;

5. For January 1, 2024, $ 13.50;

6. For January 1, 2025, $ 14.30; and

7. For January 1, 2026; $ 15.00.

(c) For January 1, 2027, on or about September 30, 2026, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above by the same amount (not percentage) as the increase in the minimum hourly wage from January 1, 2026 to January 1, 2027, for employees covered under N.J.A.C. 12:56-3.1, plus one half of the difference between $ 15.00 per hour and the minimum hourly wage in effect on January 1, 2026, for employees covered under N.J.A.C. 12:56-3.1.

(d) For January 1, 2028, on or about September 30, 2027, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above by the [page=1564] same amount (not percentage) as the increase in the minimum hourly wage from January 1, 2027 to January 1, 2028, for employees covered under N.J.A.C. 12:56-3.1, plus one half of the difference between $ 15.00 per hour and the minimum hourly wage in effect on January 1, 2026, for employees covered under N.J.A.C. 12:56-3.1.

(e) Beginning January 1, 2029, on an annual basis, on or about September 30, the Department shall revise the minimum hourly wage set forth in (a) above based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, S. City Average), as released by

the United States Department of Labor, Bureau of Labor Statistics. Annually, the Department shall, through a public notice published in the New Jersey Register, provide the new CPI-W, U.S. City Average, adjusted minimum hourly wage.

(f) The Department shall, no later than September 30 of each year, publish a notice, as set forth in (b), (c), (d), and (e) above, on the Department's website, http://www.nj.gov/labor/.

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12:56-3.3 Statutory minimum wage rate for specific years; labor on a farm

(a) Every employee engaged on a piece-rate or regular hourly rate basis to labor on a farm shall, effective January 1, 2020, be paid not less than $ 10.30 per hour or the minimum wage rate set by section 6(a)(1) of the Federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), whichever is greater.

(b) For the period from January 1, 2020 through January 1, 2024, on an annual basis, on or about September 30, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above, so as to be the greater of either an amount based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics, or the following:

1. For January 1, 2020, $ 10.30;

2. For January 1, 2021, $ 10.30;

3. For January 1, 2022, $ 10.90;

4. For January 1, 2023, $ 11.70; and

5. For January 1, 2024, $ 12.50.

(c) For the period from January 1, 2025 through January 1, 2027, on an annual basis, on or about September 30, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above, so as to be the greater of either an amount based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics, or the following:

1. For January 1, 2025, $ 13.40;

2. For January 1, 2026, $ 14.20; and

3. For January 1, 2027, $ 15.00.

(d) For January 1, 2028, on or about September 30, 2027, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above by the same amount (not percentage) as the increase in the minimum hourly wage from January 1, 2027 to January 1, 2028, for employees covered under N.J.A.C. 12:56-3.1, plus one-third of the difference between $ 15.00 per hour and the minimum hourly wage in effect on January 1, 2027, for employees covered under N.J.A.C. 12:56-3.1.

(e) For January 1, 2029, on or about September 30, 2028, the Department shall, through a public notice published in the New Jersey Register, revise the minimum hourly wage set forth in (a) above by the same amount (not percentage) as the increase in the minimum hourly wage from January 1, 2028 to January 1, 2029, for employees covered under N.J.A.C. 12:56-3.1, plus one-third of the difference between $ 15.00 per hour and the minimum hourly wage in effect on January 1, 2027, for employees covered under N.J.A.C. 12:56-3.1.

(f) For January 1, 2030, on or about September 30, 2029, the Department shall, through a public notice in the New Jersey Register, revise the minimum hourly wage set forth in (a) above by the same amount (not percentage) as the increase in the minimum hourly wage from January 1, 2029 to January 1, 2030, for employees covered under N.J.A.C. 12:56-3.1, plus one-third of the difference between $ 15.00 per hour and the minimum hourly wage in effect on January 1, 2027, for employees covered under N.J.A.C. 12:56-3.1.

(g) Beginning January 1, 2031, on an annual basis, on or about September 30, the Department shall revise the minimum hourly wage set forth in (a) above based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics. Annually, the Department shall, through a public notice published in the New Jersey Register, provide the new CPI-W, U.S. City Average, adjusted minimum hourly wage.

(h) The Department shall, no later than September 30 of each year, publish a notice, as set forth in (b), (c), (d), and (e) above, on the Department's website, http://www.nj.gov/labor/.

(i) The method for determining the minimum hourly wage rates set forth in (c), (d), (e), and (f) above may be subject to change pursuant to N.J.S.A. 34:11-56a4(d)(3), which directs the Commissioner of the Department and the Secretary of Agriculture not later than March 31, 2024, to issue a recommendation either approving the method for determining increases set forth in (c), (d), (e), and (f) above, disapproving the method for determining increases set forth in (c), (d), (e), and (f) above, or suggesting an alternative to the method for determining increases set forth in (c), (d), (e), and (f) above; and which states that the method for determining the minimum hourly wage rates set forth in (c), (d), (e), and (f) above shall take effect unless the Commissioner of the Department and the Secretary of Agriculture issue a recommendation either disapproving the method for determining increases set forth in (c), (d), (e), and (f) above or suggesting an alternative to the method for determining increases set forth in (c), (d), (e), and (f) above, and the Legislature, not later than June 30, 2024, enacts a concurrent resolution approving the implementation of the recommendation of the Commissioner and the Secretary of Agriculture.

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12:56-3.4 Statutory minimum wage rate; training wage

(a) Commencing on January 1, 2020, an employee enrolled in an established on-the-job or other training program may, for the first 120 hours of work after having been hired, be paid a training wage of not less than 90 percent of the minimum hourly wage specified at N.J.A.C. 12:56-3.1, provided the following conditions are met:

1. The employee has been hired in, and is receiving training for, an occupation in which the employee has no previous similar or related experience;

2. The employer is not utilizing the employee being paid the training wage in a manner that causes, induces, encourages, or assists any displacement or partial displacement of any currently employed worker, including any previous recipient of the training wage, by reducing hours of a currently employed worker, replacing a current or laid off employee with a trainee, or by relocating operations resulting in a loss of employment at a previous workplace, or in a manner that replaces, supplants, competes with, or duplicates any approved apprenticeship program;

3. The employer makes a good faith effort to continue to employ the employee after the period of the training wage expires; and

4. The employer shall not hire the employee at the training wage unless there is a reasonable expectation that there will be regular employment, paying at or above the effective minimum wage, for the trainee upon the successful completion of the period of the training wage.

(b) As an alternative to, or in addition to, sanctions provided at N.J.A.C. 12:56-1.3 for any violation of N.J.S.A. 34:11-56a et seq., the New Jersey Wage and Hour Law, and/or this chapter, if an employer has made repeated, knowing violations of the provisions of this section regarding the payment of a training wage, the Department shall suspend the employer's right to pay a training wage.

(c) The employer's right to pay a training wage shall not be suspended for a period beyond three years. However, in determining the length of [page=1565] time for which an employer's right to pay a training wage shall be suspended, the following criteria shall be considered:

1.The seriousness of the violation;

2. The past history of previous violations by the employer;

3. The good faith of the employer; and

4. Any other factors that the Commissioner deems appropriate in determining the length of the suspension of the employer's right to pay a training wage.

(d) Whenever the Department shall find cause to suspend the right of an employer to pay a training wage, it shall notify the employer of the reason therefor, in writing, and provide the opportunity for a hearing in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) All requests for hearings shall be filed within 10 business days from the date of receipt of the notice.

(f) In the absence of a timely request for a hearing, pursuant to (e) above, the determination of the Department shall be deemed the final administrative action in the matter.

(g) All requests for hearings shall be reviewed by the Division of Wage and Hour Compliance in order to determine whether the dispute can be resolved at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached, the case shall be forwarded to the Office of Administrative Law as a contested case.

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12:56-3.5 Tipped employees

(a) With respect to tipped employees, in determining the minimum hourly wage an employer is required to pay such an employee, only the employer who is paying its employee the minimum hourly wage set forth at N.J.A.C. 12:56-3.1 may take a credit for tips received by the employee against that minimum hourly wage (set forth at N.J.A.C. 12:56-3.1) in the following amounts:

1. For January 1, 2019 through June 30, 2019, $ 6.72 per hour;

2. For July 1, 2019 through December 31, 2019, $ 7.37 per hour;

3. For calendar year 2020, $ 7.87 per hour;

4. For calendar year 2021, $ 7.87 per hour;

5. For calendar year 2022, $ 7.87 per hour;

6. For calendar year 2023, $ 8.87 per hour; and

7. Commencing January 1, 2024, $ 9.87 per

(b) The employer who takes a tip credit under (a) above, shall pay to each employee against whom such tip credit has been applied, a cash wage equal to the difference between the minimum hourly wage set forth at N.J.A.C. 12:56-3.1 and the tip credit taken under (a) above.

(c) With respect to tipped employees for whom the employer does not take the tip credit set forth in (a) above, the employer must pay the employee a cash wage equal to the full amount of the minimum hourly wage to which the employee is entitled under either J.A.C. 12:56-3.1 (employees, generally), 3.2 (employees of a small employer and employees who are engaged in seasonal employment), 3.3 (employees engaged on a piece-rate or regular hourly rate basis to labor on a farm), or 3.4 (training wage).

(d) The tip credit permitted under (a) above may be taken only with respect to those employees whose occupations in the workweeks for which such payments are made are those of tipped employees.

(e) A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for him or her. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, who has the right to determine who shall be the recipient of the gratuity.

(f) Tips are the property of the employee whether or not the employer has taken a tip credit under (a) above.

(g) The employer is prohibited from using an employee's tips, whether or not it has taken a tip credit, for any reason other than as wages or in furtherance of a valid tip pool; this includes, a prohibition against the employer using an employee's tips to pay any portion, however small, of the fee charged to the employer by a credit card company or other financial institution for the use of credit or debit cards in its business, including the processing of such credit or debit card transactions.

(h) Only tips actually received by the employee as money belonging to the employee may be counted in determining whether the person is a "tipped employee."

(i) In addition to cash sums presented by customers that an employee keeps as his or her own, tips received by an employee include amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips. Special gifts in forms other than money, or its equivalent, as described in this section, such as theater tickets, passes, or merchandise, are not counted as tips received by the employee for purposes of this section.

(j) Where employees practice tip splitting, such as where waiters give a portion of their tips to busboys, both the amounts retained by the waiters and those given to the busboys are considered tips of the individuals who retain them. Similarly, where an accounting is made to an employer for his or her information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each individual as his or her own are counted as his or her tips.

(k) An employer must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, and may not retain any of the employees' tips for any other purpose.

(l) A compulsory charge for service, such as 15 percent of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip and, even if distributed by the employer to its employees, cannot be counted as a tip received in applying the provisions of this section. Similarly, where negotiations between a hotel and a customer for banquet facilities include amounts for distribution to employees of the hotel, the amounts so distributed are not counted as tips received.

(m) An employee must himself or herself customarily and regularly receive more than $ 30.00 per month in tips in order to qualify as a tipped employee. The fact that he or she is part of a group that has a record of receiving more than $ 30.00 per month in tips will not qualify him or her.

(n) Where an employee is employed in a dual job, for example, where a maintenance person in a hotel also serves as a waiter or waitress, if he or she customarily and regularly receives at least $ 30.00 per month in tips for his or her work as a waiter or waitress, he or she is a tipped employee only with respect to his or her employment as a waiter or waitress. He or she is employed in two occupations, and no tip credit may be taken for his or her hours of employment in his or her occupation of maintenance Such a situation is distinguishable from that of a waiter or waitress who spends part of his or her time cleaning and setting tables, toasting bread, making coffee, and occasionally washing dishes or glasses. It is likewise distinguishable from the counterperson who also prepares his or her own short orders or who, as part of a group of counterpeople, takes a turn as a short order cook for the group. Such related duties in an occupation that is a tipped occupation need not by themselves be directed toward producing tips. However, where a tipped employee spends a substantial amount of time (in excess of 20 percent in the workweek) performing related duties, no tip credit may be taken for the time spent in such duties.

(o) The employee must receive more than $ 30.00 per month in tips "customarily and regularly" in the occupation in which he or she is engaged in order to qualify as a tipped employee. If it is known that he or she always receives more than the stipulated amount each month, as may be the case with many employees in occupations, such as those of waiters, bellhops, taxicab drivers, barbers, or beauty operators, the employees will qualify and the tip credit may be applied. On the other hand, an employee who only occasionally or sporadically receives tips totaling more than $ 30.00 per month, such as at Christmas or New Years' when customers may be more generous than usual, will not be deemed a tipped employee. The phrase "customary and regularly" signifies a frequency which must be greater than occasional, but which may be less than constant. If an employee is in an occupation in which he or she normally and recurrently receives more than $ 30.00 per month in tips, he or she will be considered a tipped employee even though occasionally because of sickness, [page=1566] vacation, seasonal fluctuations, or the like, he or she fails to receive more than $ 30.00 in tips in a particular month.

(p) An exception to the requirement that an employee will qualify as a tipped employee under (o) above is made in the case of initial and terminal months of employment. In such months, the purpose of the provision for tipped employees would be fulfilled if qualification as a tipped employee is based on his or her receipt of tips in the particular week or weeks of such month at a rate in excess of $ 30.00 per month, where the employee has worked less than a month because he or she started or terminated employment during the month.

(q) An employer is not eligible to take the tip credit set forth in (a) above, unless it has informed its tipped employees in advance of the employer's use of the tip credit of the following:

1. The amount of the cash wage that is to be paid to the tipped employee by the employer;

2. The amount of the tip credit, which will be claimed by the employer, which amount may not exceed the value of the tips actually received by the employee;

3. That all tips received by the tipped employee must be retained by the employee, except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and

4. That the tip credit shall not apply to any employee who has not been informed of the requirements of this section.

(r) The credit allowed on account of tips may be less than that permitted under (a) above; it cannot be more.

(s) In order for the employer to claim the maximum tip credit set forth in (a) above, the employer must demonstrate that the employee received at least that amount in actual tips. If the employee received less than the maximum tip credit amount in tips, the employer is required to pay the balance, so that the employee receives at least the minimum hourly wage under N.J.A.C. 12:56-3.1 with the defined combination of wages and tips.

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12:56-3.6 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 applicable minimum wage rate;

2.-4. (No change.)

5. Minors under 18 years of age except as provided at N.J.A.C. 12:56-11, 13, and 14, and 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.

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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.

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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.

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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.

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12:56-4.4 Retention period

Records containing the information required by this subchapter shall be kept for six years.

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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.

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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.

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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.

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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.

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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.

(b) Such records shall include the nature and amount of any expenditures entering into the computation of the fair value of the food or lodging and shall contain the date 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, assistant director or his or her authorized representative to verify the nature of the expenditure and amount by reference to the basic records which shall be preserved pursuant to this chapter.

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12:56-4.10 Additions to wages

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 act 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.

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SUBCHAPTER 5. HOURS WORKED

12:56-5.1 Payment

Employees entitled to the benefits of the act shall be paid for all hours worked.

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12:56-5.2 Computation

(a) All the time the employee is required to be at his or her place of work or on duty shall be counted as hours worked.

(b) Nothing in this chapter requires an employer to pay an employee for hours the employee is not required to be at his or her place of work because of holidays, vacation, lunch hours, illness and similar reasons.

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12:56-5.3 Accounting for irregular hours of resident employees

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.

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12:56-5.4 Workweek construed

(a) A workweek shall be a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods.

(b) The workweek need not be the same as the calendar week and may begin any day of the week and any hour of the day.

(c) The workweek shall be designated to the employee in advance.

(d) Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of the hours worked.

(e) 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 act.

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12:56-5.5 Reporting for work

(a) An employee who by request of the employer reports for duty on any day shall be paid for at least one hour at the applicable wage rate, except as provided in (b) below.

(b) The provisions of (a) above shall not apply to an employer when he or she has made available to the employee the minimum number of hours of work agreed upon by the employer and the employed prior to the commencement of work on the day involved.

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12:56-5.6 On-call time

(a) When employees are not required to remain on the employer's premises and are free to engage in their own pursuits, subject only to the understanding that they leave word at their home or with the employer where they may be reached, the hours shall not be considered hours worked. When an employee does go out on an on-call assignment, only the time actually spent in making the call shall be counted as hours worked.

(b) If calls are so frequent or the "on-call" conditions so restrictive that the employees are not really free to use the intervening periods effectively for their own benefit, they may be considered as "engaged to wait" rather than "waiting to be engaged". In that event, the waiting time shall be counted as hours worked.

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12:56-5.7 On-call employees required to remain at home

"On-call" employees may be required by their employer to remain at their homes to receive telephone calls from customers when the company office is closed. If "on-call" employees have long periods of uninterrupted leisure during which they can engage in the normal activities of living, any reasonable agreement of the parties for determining the number of hours worked shall be accepted. The agreement shall take into account not only the actual time spent in answering the calls but also some allowance for the restriction on the employee's freedom to engage in personal activities resulting from the duty of answering the telephone.

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12:56-5.8 Use of time clocks

(a) Differences between clock records and actual hours worked. Time clocks are not required. In those cases where time clocks are used, employees who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for such periods provided, of course, that they do not engage in any work. Their early or late clock punching may be disregarded. Minor differences between the clock records and actual hours worked cannot ordinarily be avoided, but major discrepancies should be discouraged since they raise a doubt as to the accuracy of the records of the hours actually worked.

(b) "Rounding" practices. It has been found that in some industries, particularly where time clocks are used, there has been the practice for many years of recording the employees' starting time and stopping time to the nearest 5 minutes, or to the nearest 1/10 or quarter of an hour. Presumably, this arrangement averages out, so that the employees are fully compensated for all the time they actually work. For enforcement purposes this practice of computing working time will be accepted, provided that it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.

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SUBCHAPTER 6. OVERTIME

12:56-6.1 Rate of overtime payment

For each hour of working time in excess of 40 hours in any week, except for those exemptions set forth in N.J.S.A. 34:11-56a4 or as provided in N.J.A.C. 12:56-7.1, every employer shall pay to each of his or her employees, wages at a rate of not less than 1 1/2 times such employee's regular hourly

wage.

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12:56-6.2 Computation

(a) Overtime and minimum wage pay shall be computed on the basis of each workweek standing alone.

(b) Hours shall not be averaged over two or more workweeks.

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12:56-6.3 Actual wage basis

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

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12:56-6.4 Workweek hours

(a) Covered employees shall be paid 1 1/2 times the regular hourly wage for each hour of working time in excess of 40 hours in any workweek.

(b) There is no requirement that an employee be paid premium overtime compensation for hours in excess of eight hours per day, nor for work on Saturdays, Sundays, holidays or regular days of rest, other than the required overtime for over 40 hours per week; provided, however, nothing shall relieve an employer of any obligation he or she may have assumed by contract or of any obligation imposed by other State or Federal law limiting overtime hours of work or to pay premium rates for work which are in excess of the minimum required by this chapter.

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12:56-6.5 "Regular hourly wage" payment basis

(a) The "regular hourly wage" is a rate per hour.

(b) The act 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 shall be paid on the basis of the hourly rate derived therefrom. Therefore, the regular hourly wage of an employee is determined by dividing his or her 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.

(c) If an employee is remunerated solely on the basis of a single hourly rate, the hourly rate shall be his or her "regular hourly wage".

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12:56-6.6 Items excluded from "regular hourly wage"

(a) The "regular hourly wage" shall not be deemed to include:

1. Payments in the nature of gifts made on holidays 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;

2. Payments made for occasional periods when no work is performed due to vacation, holiday or other similar cause;

3. Reasonable payments for traveling or other expenses incurred by an employee in the furtherance of his or her employer's interests and properly reimbursable by the employer which are not made as compensation for employment;

4. Sums paid in recognition of services performed during a given period if either:

i. Both the fact that payment is to be made and the amount of 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

ii. 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

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

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

7. Overtime premiums.

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12:56-6.7 Offsets; cash payments

(a) Overtime premium payments shall not 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 shall be cash payments by the employer.

(b) 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 this chapter if the premium payment for the overtime hours is paid in cash on the basis of the agreed hourly wage, but in no event shall the premium payment be at a rate less than the applicable minimum rate.

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SUBCHAPTER 7. EXEMPTIONS FROM OVERTIME

12:56-7.1 Employees exempt from overtime

Any individual employed in a bona fide executive, administrative, professional or outside sales capacity shall be exempt from the overtime requirements of N.J.A.C. 12:56-6.1.

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12:56-7.2 Defining and delimiting the exemptions from overtime for executive, administrative, professional and outside sales employees

(a) Except as set forth in (b) below, the provisions of 29 CFR Part 541 are adopted herein by reference.

(b) Not adopted by reference are those provisions within 29 CFR Part 541 that apply solely to those individuals employed by government employers, including, but not limited to, those individuals employed by State, county and municipal employers, since the definition of the term "employer" within N.J.S.A. 34:11-56a1 does not include government employers. See N.J.S.A. 34:11-56a1 ("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); See also, *Allen v. Fauver,* 167 *N.J.* 69 (2001).

(c) "Administrative" shall also include an employee whose primary duty consists of sales activity and who receives at least 50 percent of his or her total compensation from commissions and a total compensation of not less than $400.00 per week.

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12:56-7.3 Exemption from overtime for an employee of a common carrier of passengers by motor bus

(a) Pursuant to N.J.S.A. 34:11-56a4, any individual employed by a common carrier of passengers by motor bus shall be exempt from the overtime requirements of N.J.A.C. 12:56-6.1.

(b) "Common carrier of passengers by motor bus," as used in this section, shall mean any employer that operates an "autobus," as that term is defined in N.J.S.A. 48:4-1, where the operation of the "autobus" has been authorized by the Chief Administrator of the New Jersey Motor Vehicle Commission through the issuance of a certificate of public convenience and necessity under N.J.S.A. 48:4-3.

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SUBCHAPTER 8. GRATUITIES, FOOD AND LODGING

12:56-8.1 Definitions

(a) "Fair value" means not more than the actual cost to the employer of the food or lodging supplied by an employer and does not include a profit to the employer nor to any affiliated business or person.

(b) "Gratuity" means cash received by an employee for services rendered for an employer or customer of an employer.

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12:56-8.2 Gratuity splitting

Where employees practice gratuity splitting (for example, where food servers pay a portion of the gratuities received by them to food clearers), each employee shall have included in wages only the applicable proportionate share.

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12:56-8.3 Determining cash gratuities

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

1. Statements, including United States Treasury Department, Internal Revenue Service, "Employee's Report on Tips", that are furnished by an employee to an 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.

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12:56-8.4 Administrative handling of gratuities

(a) Provided there is an 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 based upon a percentage of gross sales apportioned on basis of hours worked among the employees being tipped. This portion shall be:

1. Derived from a representative sampling of the sources indicated in N.J.A.C. 12:56-8.3; or

2. Ten percent; or

3. Such other method as may be agreed upon subject to the approval of the Commissioner.

(b) Gratuities shall be the property of the tipped employee. Gratuities shall be restored to the tipped employee except when gratuities are pooled, voluntarily by the employees or as a policy of management.

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12:56-8.5 Additional cash contribution claim

In no event shall N.J.A.C. 12:56-6.4 and 6.5 be interpreted to deny to an employee the right to make claim for additional cash compensation where it is shown to the satisfaction of the Commissioner that the actual amount of tips received was less than the amount determined by the employer.

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12:56-8.6 Fair value computed

(a) 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 for interest on the depreciated amount of capital invested by the employer.

(b) The fair value so computed shall not exceed the rental value of comparable facilities in the State.

(c) The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be arrived at in accordance with generally accepted accounting practices.

(d) Generally accepted accounting practices shall 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.

(e) Items found to be primarily for the benefit of the employer shall not be included in the cost.

(f) Lodging furnished which is in violation of any Federal, State, or local law, ordinance or prohibition shall be valued at nothing.

(g) When a fair market value does not exist for rental of the lodging in the competitive open market, the fair market value shall be zero.

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12:56-8.7 Inspection of fair value methods

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

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12:56-8.8 Method of determining "fair value"

The following is an example of a method of determining fair value:

Employer "A" has three employees who are furnished food and lodging in addition to gross cash wages of $2.50 per hour. The cost of food purchased for the employees is $72.00 total a week. The building housing the employees cost $36,000 in 1978 and subsequent improvements amounted to $4,000. Maintenance costs for the year were $2,480. The estimated life of the building when constructed was 50 years. The building can adequately house six persons.

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

Total cost	$72.00
"Fair value" per employee ($72.00 divided by 3)	$24.00

The "fair value" of lodging for year 1979 is determined as follows:

Cost of building in 1978	$36,000.00
Add: Subsequent improvements	$4,000.00

Total cost	$40,000.00
Depreciation for year (1/50 times $40,000.00)	$800.00
Maintenance costs for year	$2,480.00

Interest on employer's net investment:

Total investment	$40,000.00
Depreciation to date	$800.00
Net investment	$39,200.00

Six percent of net investment	$2,352.00
Total for year	$5,632.00
Total for week ($5,632.00 divided by 52)	$108.31
"Fair value" per employee ($108.31 divided by 6 persons)	$18.05

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

Gross cash wages (40 times $2.50)	$100.00
Fair value of food	$24.00
Fair value of lodging	$18.00
Gross weekly wage	$142.05
Hourly wage ($142.05 divided by 40)	$3.55

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. times $2.50)	$120.00
Fair value of food	$24.00
Fair value of lodging	$18.05
Total straight time wages	$162.05

Overtime wages:

Regular hourly wage (162.05 divided by 48 hours Overtime pay 8 x $3.38 divided by 2)	$13.52

Employee B Wage entitlement for 48 hours	$175.57

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12:56-8.9 (Reserved)

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SUBCHAPTER 9. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

12:56-9.1 Definitions

(a) "Individual with disability" means an individual whose earning capacity is impaired by a physical or mental disability and who is being served or eligible to be served in accordance with the recognized rehabilitation program of a sheltered workshop, education 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, physical or mental deficiency or injury, and to provide such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

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12:56-9.2 Application for permit

(a) Application for a special permit shall be filed on properly executed prescribed forms with the Office of Wage and Hour Compliance. Special permit means authorization to employ individuals with disabilities at wages less than minimum wage rates for such period of time fixed and stated in the authorization.

(b) A blanket special permit may be issued for an entire sheltered workshop or a department of a sheltered workshop.

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12:56-9.3 Criteria for permit

(a) The following criteria may be considered in determining the necessity of issuing a special permit:

1. The present and previous earnings of disabled employees;

2. The nature and extent of the disability;

3. The wages of employees who are not disabled engaged in comparable work;

4. The types and duration of rehabilitative services;

5. The extent to which individuals with disabilities share, through wages, in the receipts for work done;

6. The extent to which the disabled employees are learners;

7. 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; and

8. The productivity of the disabled employee.

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12:56-9.4 Compliance

(a) All terms and conditions shall be complied with under which a special permit is granted.

(b) No individual who is not an individual with a disability shall be employed under a special permit at wages lower than the minimum required by the act.

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12:56-9.5 Cancellation of permit

(a) The Commissioner may cancel any special permit for cause.

(b) A special permit may be canceled as of the date of issuance upon the following conditions:

1. If it is found that fraud has been exercised in obtaining the special permit or in permitting an individual with a disability to work thereunder; or

2. As of the date of the violation, if it is found that any of the provisions of the act, or of the terms of the special permit have been violated; or

3. As of the date of notice of cancellation, if in the judgment of the Commissioner, the special permit is no longer necessary in the interest of the employees covered.

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SUBCHAPTER 10. (RESERVED)
SUBCHAPTER 11. EMPLOYMENT IN THE FIRST PROCESSING OF FARM PRODUCTS OCCUPATIONS

12:56-11.1 Definitions

(a) "First processing of farm products occupations" means any activity as an employee in an establishment which is in an industry engaged primarily in the first processing of farm products during seasonal operations.

(b) "Industry engaged primarily in the first processing of farm products" means an establishment which is primarily engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables for human consumption, during seasonal operations.

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12:56-11.2 Minimum wage

All employees including those under the age of 18 engaged in first processing of farm products occupations shall be paid at minimum wage rates as provided in N.J.A.C. 12:56-3.1.

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12:56-11.3 Overtime rates

Overtime at 1 1/2 times the regular hourly rate shall be paid to those engaged in first processing of farm products occupations for all hours worked in excess of 40 in a week.

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SUBCHAPTER 12. EMPLOYMENT IN SEASONAL AMUSEMENT OCCUPATIONS

12:56-12.1 Definitions

(a) "Seasonal amusement occupation":

1. Means any activity as an employee in an establishment which is exclusively an amusement or recreational establishment, provided:

i. It does not operate for more than seven months in any calendar year; or

ii. During the preceding calendar year, its average receipts for any consecutive six months of such year were not more than 33 1/3 percent of its average receipts for the other six months of that year.

2. "Seasonal amusement occupation" includes but is not limited to amusement rides and amusement device operators, cashiers who sell tickets for the rides and device, and operators of game concessions.

3. "Seasonal amusement occupation" does not include retail, eating or drinking concessions; nor does it pertain to camps, beach and swimming facilities, movie theatres, theatrical productions, athletic events, professional entertainment, pool and billiard parlors, circuses and outdoor shows,

sport activities or centers, country club athletic facilities, bowling alleys, race tracks and like facilities which are not part of a diversified amusement enterprise.

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12:56-12.2 Minimum wage

Employees engaged in seasonal amusement occupations shall be paid at minimum wage rates as provided in N.J.A.C. 12:56-3.1.

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12:56-12.3 Overtime rates

Employees engaged in seasonal amusement occupations shall be exempt from the overtime provisions of the act.

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SUBCHAPTER 13. EMPLOYMENT IN HOTEL AND MOTEL OCCUPATIONS

12:56-13.1 Definitions

(a) "Hotel and motel occupation" means any activity as an employee for an establishment kept, used, maintained, advertised as or held out to be a place where sleeping accommodations are supplied for pay to transient or permanent guests, in which 15 or more rooms are available for rental furnished or unfurnished; except this definition shall not include summer camps and country clubs when these activities are not part of a hotel or motel establishment.

(b) "Seasonal hotel and motel" means a hotel or motel in which, during the previous business year, not less than two-thirds of the gross receipts were received in a continuous period of three months or less.

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12:56-13.2 Minimum wage

Employees including those under 18 years of age engaged in hotel and motel occupations shall be paid a minimum wage rate as provided in N.J.A.C. 12:56-3.1.

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12:56-13.3 Overtime rates

Overtime at 1-1/2 times the regular hourly wage rate shall be paid for all hours worked in excess of 40 hours in any week.

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12:56-13.4 Cash wage standard

(a) The wage rates established in this subchapter shall be acceptable in those occupations where gratuities or food and/or lodging are actually received.

(b) Employers subject to the Fair Labor Standards Act must pay the Federal cash wage rate of $2.13 and must demonstrate that the balance of the $5.05[1] minimum wage required under State law is paid through gratuities in accordance with N.J.A.C. 12:56-4 and 12:56-8. Employers not subject to the Fair Labor Standards Act must demonstrate that the total wage, including cash and gratuities, equals the $5.05[1] minimum wage required under State law in accordance with N.J.A.C. 12:56-4 and 12:56-8.

[[1]For the current minimum hourly wage rate, please check Wage & Hour FAQs.]

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12:56-13.5 Substantiation of gratuities; food and lodging cost

Employer substantiation of gratuities received by an employee and the cost of food and lodging shall be as provided in this chapter.

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12:56-13.6 Food and lodging as wages over 40 hours

Food and lodging supplied to employees shall not be included in wages for those hours worked in excess of 40 hours per week.

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12:56-13.7 Cash wage condition of employment

Where cash wages have been established as a condition of employment through agreement between the employer and employee, gratuities, food and lodging shall not be included as part of such cash wages.

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12:56-13.8 Required food and lodging acceptance; costs

Meals and lodging which the employer requires the employee to accept shall be considered for the convenience of the employer and the cost thereof shall not be considered applicable as minimum wages.

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SUBCHAPTER 14. EMPLOYMENT IN FOOD SERVICE OCCUPATIONS

12:56-14.1 Definitions

(a) "Restaurant industry" means any eating or drinking place which prepares and offers food or beverages for human consumption either in any of its premises or by such services as catering, banquets, box lunch or curb service.

(b) "Restaurant occupation" means any activity of any employee in the restaurant industry.

(c) "Uniform" means any garment such as dress, apron, collar, cuffs or headdress which is worn by the employee either at the direction of the employer or as a condition of employment.

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12:56-14.2 Minimum wage

Employees including those under 18 years of age employed at restaurant occupations shall be paid a minimum wage rate as provided in N.J.A.C. 12:56-3.1.

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12:56-14.3 Overtime rates

(a) Overtime at 1 1/2 the regular hourly wage shall be paid for all hours worked in excess of 40 hours in any week.

1. The minimum overtime rate for those covered by the overtime provision is $5.70 on May 3, 1990, $6.38 on April 1, 1991, and $7.58[1] on April 1, 1992.

2. If the employee's regular hourly wage rate is more than the minimum per hour, then the overtime rate is 1-1/2 times the employee's regular rate.

3. Food and lodging supplied to employees shall not be included in wages for those hours worked in excess of 40 hours per week. Gratuities shall not be counted toward the premium part of the overtime. The additional halftime must be in cash.

[[1] The current minimum overtime rate is 1 1/2 the current minimum hourly wage rate. For the current minimum hourly wage rate, please check Wage & Hour FAQs.]

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12:56-14.4 Cash wage standard

(a) The wage rate established in this subchapter shall be acceptable in those occupations where gratuities or food and/or lodging are actually received.

(b) Employers subject to the Fair Labor Standards Act must pay the Federal cash wage rate of $2.13 and must demonstrate that the balance of the $5.05[1] minimum wage required under State law is paid through gratuities in accordance with N.J.A.C. 12:56-4 and 12:56-8. Employers not subject to the Fair Labor Standards Act must demonstrate that the total wage, including cash and gratuities, equals the $5.05[1] minimum wage required under State law in accordance with N.J.A.C. 12:56-4 and 12:56-8.

[[1]For the current minimum hourly wage rate, please check Wage & Hour FAQs.]

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12:56-14.5 Substantiation of gratuities, food and lodging cost

Employer substantiation of gratuities received by an employee and the cost of food and lodging shall be as provided in this chapter.

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12:56-14.6 Food and lodging as wages over 40 hours

Food and lodging supplied to employees shall not be included in wages for those hours worked in excess of 40 hours per week.

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12:56-14.7 Cash wage condition of employment

Where cash wages have been established as a condition of employment through agreement between the employer and the employee or the employee's collective bargaining agent, gratuities, food and lodging shall not be included as part of such cash wages.

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12:56-14.8 Meals and lodging applicable to minimum wage

Meals and lodging shall be considered applicable toward the minimum wage unless the employee elects not to receive such meals and lodging.

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SUBCHAPTER 15. EMPLOYMENT IN AIR CARRIER INDUSTRY

12:56-15.1 Definitions

(a) "Air carrier employee" means an employee, non-union or union, where applicable labor agreements permit, who operates in a phase of air carrier employment which operates on a seven day a week, 24 hour-a-day basis and whose normal work is scheduled on a seven day a week, 24 hour-a-day basis.

(b) "Air carrier employer" means an air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to Section 401 of the Federal Aviation Act of 1958, 49 USC Section 1371.

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12:56-15.2 Minimum wage

Employees engaged in the air carrier industry shall be paid a minimum wage rate as provided in N.J.A.C. 12:56-3.1.

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12:56-15.3 Overtime rates

(a) Overtime shall be paid at 1 1/2 times the regular hourly wage rate to all nonexempt employees for all hours worked in excess of 40 hours in a week except rescheduled time off for overtime shall be permitted to air carrier employees where:

1. The employee so requests;

2. The employer determines that the workload demands permit the employee's absence; or

3. The rescheduled time off is taken within specified periods.

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SUBCHAPTER 16. INDEPENDENT CONTRACTOR STATUS

12:56-16.1 Independent contractor status criteria

The criteria identified in the Unemployment Compensation Law at N.J.S.A. 43:21-19(i)(6)(A)(B)(C) and interpreting case law will be used to determine whether an individual is an employee or independent contractor for purposes of the Wage and Hour Law.

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SUBCHAPTER 17. UNIFORMS

12:56-17.1 Uniforms

(a) It shall be a presumption that the employer has required his or her employees to wear uniforms if such garments are of a similar design, color or material, or form part of the decorative pattern of the establishment.

(b) Maintenance and upkeep of uniforms of kitchen people, cooks, and dishwashers shall be provided and maintained by the employer.

(c) If uniforms are required which are not appropriate for street wear or use in other establishments, the employer shall pay for the cost of such uniforms.

(d) If a particular type of clothing is required to be worn, which is appropriate for street wear, the employer who requires an employee to furnish more than one style, type or color of clothing during any one year of his or her employment shall pay to each such employee, in addition to his or her regular wages otherwise due, the amount which employee is required to pay for newly required uniform or uniforms and such additional payment shall be made to the employee in the week in which the change is required.

(e) No deduction from the pay of employees for uniforms shall be permitted. If the employee pays for uniforms in cash and the cash payment brings the employee below the minimum wage, the employer shall make up the difference for the minimum wage for that week.

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SUBCHAPTER 18. SCHOOL-TO-WORK PROGRAM

12:56-18.1 Definitions

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

"Career awareness and exploration" means structured school programs that enable student learners to:

1. Develop awareness of the many employment opportunities available;

2. Develop awareness of the relevant factors to be considered in making career decisions;

3. Become familiar with occupational clusters and classifications;

4. Explore key occupational areas and assess their own interests and abilities; and

5. Develop tentative occupational plans and arrive at a tentative career choice.

"Incidental" means any irrelevant, occasional productive work which is not part of achieving learning objectives.

"Internship" means a program of study for a student which includes supervised practical training.

"Job shadowing" means the process by which a student learner determines (by observation, interview and study) the pertinent information related to an occupation. Information can include such factors as: qualifications for employment, functions performed, necessary skills and knowledge, equipment and material used, and physical demands and working environment.

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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 worksite 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.

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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.

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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.

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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.

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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.

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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.

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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.

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CHAPTER 57 WAGE ORDERS FOR MINORS
SUBCHAPTER 1. GENERAL PROVISIONS

12:57-1.1 Purpose; scope

(a) The purpose of this chapter is to define and clarify certain sections of N.J.S.A. 34:11-56a et seq.

(b) This chapter shall apply to the wage rates for the employment of minors subject to N.J.S.A. 34:11-34 et seq.[1]

(c) This chapter shall apply to minors employed in mercantile occupations, beauty culture occupations, and laundry, cleaning and dyeing occupations.

(d) Other wage orders and regulations for minors under 18 years of age are provided for under N.J.A.C. 12:56-11, 13 and 14, Wage and Hour.

[[1] Revised N.J.S.A. cite to 34:11-56a et seq. from 34:11-34 et seq.]

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12:57-1.2 Violations and penalties

(a) An employer or his or her agent, or the officer or agent of any corporation, is a disorderly person, if he or she discharges or in any other manner discriminates against any employee because the employee has served or is about to serve on a wage board or has testified or is about to testify before a wage board or in any other investigation or proceeding or because the employer believes that the employee may serve on a wage board or may testify before a wage board or in any investigation or proceeding under this chapter and shall be guilty of a disorderly person offense and upon conviction be punished by a fine of not more than $500.00[1].

(b) An employer or the officer or agent of any corporation is a disorderly person if he or she pays or agrees to pay to any minor less than the rates applicable to such minor under a mandatory minimum fair wage order and shall be guilty of a disorderly person offense and upon conviction be punished by a fine of not more than $500.00[1] or by imprisonment of not more than 90[2] 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 or her under a mandatory minimum fair wage order; and each employee so paid, shall constitute a separate offense.

(c) An employer or the officer or agent of any corporation is a disorderly person if he or she fails to keep the records required or to furnish such records to the Commissioner upon request and shall be guilty of a disorderly person offense and upon conviction be punished by a fine of not more than $500.00[1] and each day of such failure to keep the records or to furnish same as required shall constitute a separate offense.

[[1] A fine of not more than $1,000.00 pursuant to N.J.S.A. 34:11-56a22.
[2] Imprisonment of not more than 100 days pursuant to N.J.S.A. 34:11-56a22.]

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SUBCHAPTER 2. DEFINITIONS

12:57-2.1 Definitions

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

"Act" means 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 and Workforce Development or his or her designee.

"Division of Wage and Hour Compliance" means the Division of Wage and Hour Compliance within the Labor Standards and Safety Enforcement program area of the New Jersey State Department of Labor and Workforce Development, PO Box 389, Trenton, N.J. 08625.

"Employee" means any individual employed by an employer.

"Employer" means 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.

"Minor" means any person under the age of 18 years.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

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SUBCHAPTER 3. MERCANTILE OCCUPATIONS

12:57-3.1 Scope

This subchapter shall apply to the minimum wage rates paid to all minors engaged in mercantile occupations, irrespective of the nature of the business of the employer or the location of the place where the work is being performed.

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12:57-3.2 Definitions

(a) "Mercantile occupation" means:

1. Any employment in or for any industry or business selling or offering for sale any type of merchandise, wares, goods, articles or commodities.

2. All work connected with the soliciting of sales or opportunities for sale and the distributing of such merchandise, wares, goods, articles or commodities and the rendering of services incidental to the sale, use or upkeep of the same whether performed on the employer's premises or elsewhere; or

3. Work performed in the manufacturing of merchandise sold at retail upon the premises where it is manufactured; and

4. Does not mean work performed in the manufacturing of merchandise which is sold at wholesale by the manufacturer.

(b) "Working time" means time for which wages are paid and includes both time worked and time of authorized attendance, whether or not work is provided and time is spent in traveling, within the State of New Jersey, from one establishment to another which is authorized or requested by the employer.

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12:57-3.3 Minimum wage

Minors under 18 years of age at mercantile occupations shall be paid not less than the statutory minimum wage rate.

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12:57-3.4 Overtime rate

(a) Overtime, at the rate of not less than one and one-half times the regular rate at which the employee is actually employed, shall be paid to each minor for hours worked in excess of 40 in any one week, except that the overtime rate shall not apply to an executive, professional or administrative employee who is paid for his or her services in accordance with N.J.A.C. 12:56-7.

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12:57-3.5 Regular hourly wage

(a) "Regular 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.

(b) The regular rate of pay at which the employee is employed shall not be less than the minimum rate established by N.J.A.C. 12:57-3.3.

(c) When an employee is paid on a piece work basis or any other basis than an hourly rate the regular hourly wage shall be determined by dividing the total of the hours worked during the week into the employee's total earnings exclusive of part time bonuses for the week and exclusive of wages earned at overtime rates as such rates are defined.

(d) The total computed earnings shall include commissions, bonuses and all compensation paid by the employer, except overtime pay.

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12:57-3.6 Waiting time

Time during regular working hours and at other periods when employees are required to wait on the premises and no work is provided by the employer shall be counted as working time and paid at such employee's regular hourly wage.

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12:57-3.7 Travel time

An employee who is required or authorized to travel, from one establishment to another shall be compensated for the travel time at the same rate as for working time and shall be reimbursed for travel expense.

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12:57-3.8 Piece work

(a) Minors employed on a piece work or commission basis shall be employed at rates which yield to each employee not less than the minimum wage established for time workers.

(b) For any week during which a minor is employed on a piece work or commission basis, or any basis whatsoever other than an hourly or time basis, the minimum amount of wage that shall be paid to such employee for such work shall be not less than the amount the employer would be required to pay if such employee were employed on an hourly or time basis.

(c) In the case of commissioned employees, their minimum wage may be charged against the commissions earned.

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12:57-3.9 Employment under existing minimum wage orders

Whenever an employee is employed in any week solely in occupations governed by another minimum wage order, such employee may, for such week, be paid not less than the minimum rates required by such other minimum wage order.

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12:57-3.10 Diversified employment

(a) "Diversified employment" means employment of an employee by one employer in mercantile occupations and during the same time being employed in occupations either covered or not covered by other minimum wage orders.

(b) An employee who during any payroll period works at diversified employment shall be paid for the full payroll period at the highest minimum wage rate established by any minimum wage order for any occupation in which the employee was engaged during the pay period in question; provided, however, that in cases where the employer has kept an accurate record of the actual time the employee has been engaged in each covered occupation, the employee may be paid not less than the minimum wage earned at such occupation.

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12:57-3.11 Individuals with disabilities

No minor whose earning capacity has been impaired by physical or mental disability shall be paid at less than the minimum wage until a special license, in accordance with the provisions of N.J.S.A. 34:11-56a17(b), has been obtained by the employer from the Division of Wage and Hour Compliance.

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12:57-3.12 Records

(a) Every employer shall keep a record of the name and address of each such employee, together with a record of the ages of all minors, a true and accurate record of the amount paid each pay period to each minor, and such other records as are essential in determining an employee's regular hourly wage and the amount of overtime wages earned.

(b) Employers are required to keep a true and accurate record of the hours worked each day. These records shall include the actual starting and stopping time of each work period and the total hours worked each pay period by each minor.

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12:57-3.13 Posting

A notice issued by the Division of Wage and Hour Compliance setting forth the provisions of this subchapter shall be posted in a conspicuous place in every room where minors are employed at mercantile occupations.

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SUBCHAPTER 4. BEAUTY CULTURE OCCUPATIONS

12:57-4.1 Scope

This subchapter shall apply to the minimum wage rates paid to all minors engaged in beauty culture occupations, irrespective of the nature of the business of the employer or the location of the place where the work is being performed.

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12:57-4.2 Definitions

(a) "Beauty culture establishment" means any shop, store, place, room or part thereof, in which services are rendered in a beauty culture occupation, or any branch thereof, and a charge is made to the recipient of such services.

(b) "Beauty culture occupation" means any service, operation or process used or useful in the care, cleansing, or beautification of or in the enhancement of personal appearance, and all service, operation or process, incidental to such care, cleansing, beautification or enhancement, including the service of demonstrators, maids, cashiers, reception or appointment clerks.

(c) "Operator" means any employee duly licensed as an operator, manicurist, manager-operator or demonstrator by the New Jersey Board of Beauty Culture.

(d) "Senior student permit" means a permit issued by the New Jersey Board of Beauty Culture.

(e) "Temporary permit" means a permit issued by the New Jersey Board of Beauty Culture.

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12:57-4.3 Minimum wage

Minors under 18 years of age at beauty culture occupations shall be paid not less than the statutory minimum wage rate.

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12:57-4.4 Overtime rate

Overtime, at the rate of not less than one and one-half times the regular rate at which the employee is actually employed, shall be paid to each minor for hours worked in excess of 40 in any one week, except that the overtime rate shall not apply to an executive, professional or administrative employee who is paid for his or her services in accordance with N.J.A.C. 12:56-7.

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12:57-4.5 Regular hourly wage

(a) "Regular 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.

(b) The regular rate of pay at which the employee is employed shall not be less than the minimum rate established by N.J.A.C. 12:57-4.3.

(c) When an employee is paid on a piece work basis or any other basis than an hourly rate the regular hourly wage shall be determined by dividing the total of the hours worked during the week into the employee's total earnings exclusive of part time bonuses for the week and exclusive of wages earned at overtime rates as such rates are defined.

(d) The total computed earnings shall include commissions, bonuses and all compensation paid by the employer, except overtime pay.

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12:57-4.6 Waiting time

Any period of time during which an employee is required to wait on the premises and during which period no work is provided by the employer shall be counted as working time and be paid at such employee's regular hourly wage.

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12:57-4.7 Gratuities

In no case shall tips or gratuities from patrons be counted as part of the minimum wage or regular wage rate being paid to an employee.

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12:57-4.8 Furnishing equipment

Employers shall furnish all material and equipment pertinent to performance of the work with the exception of personal manicuring and hair cutting tools.

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12:57-4.9 Individuals with disabilities

No minor whose earning capacity has been impaired by physical or mental disability shall be paid at less than the minimum wage, unless a special license, in accordance with the provisions of N.J.S.A. 34:11-56a17(b), has been obtained by the employer from the Division of Wage and Hour Compliance.

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12:57-4.10 Records

(a) Every employer shall keep the following records for each minor employee:

1. Full name, address, and occupational classification;

2. Date of birth;

3. A true and accurate record of hours worked each day including record of starting and stopping time, meal periods, total daily and weekly hours and amount of wages paid for each pay period.

4. Such other records as are essential in determining an employee's regular hourly wage and the amount of overtime wages earned and paid.

(b) Records shall be dated showing the payroll ending date by month, day and year, and all records shall be kept so as to enable representatives of the Division of Wage and Hour Compliance to determine readily whether or not the employer is complying with the orders of the Commissioner.

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12:57-4.11 Posting

A notice issued by the Division of Wage and Hour Compliance setting forth the provisions of this subchapter shall be posted in a conspicuous place in every room where minors are employed in a beauty culture occupation.

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SUBCHAPTER 5. LAUNDRY, CLEANING AND DYEING OCCUPATIONS

12:57-5.1 Scope

This subchapter shall apply to the minimum wage rate paid to all minors engaged in laundry, cleaning and dyeing occupations, irrespective of the nature of the business of the employer or the location of the place where the work is being performed.

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12:57-5.2 Definitions

"Laundry, cleaning and dyeing occupation" means any activity of a minor or any capacity in the marking, sorting, washing, cleansing, collecting, ironing, assembling, packaging, pressing, receiving, shipping or delivery, or any other activity including clerical work, directly incidental or essential to the laundering, cleaning or renovating of any articles of clothing, napery, blanket, rugs, carpets, draperies, bed clothing fabric, textile, fur or leather, when such activity is not performed in the original process of manufacturing.

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12:57-5.3 Minimum wage

Minors under 18 years of age at laundry, cleansing and dyeing occupations shall be paid not less than the statutory minimum wage rate.

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12:57-5.4 Overtime rate

Overtime, at the rate of not less than one and one-half times the regular rate at which the employee is actually employed, shall be paid to each minor for hours worked in excess of 40 in any one week, except that the overtime rate shall not apply to an executive, professional or administrative employee who is paid for his or her services in accordance with N.J.A.C. 12:56-7.

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12:57-5.5 Regular hourly wage

(a) "Regular 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.

(b) The regular rate of pay at which the employee is employed shall not be less than the minimum rate established by N.J.A.C. 12:57-5.3.

(c) When an employee is paid on a piece work basis or any other basis than an hourly rate the regular hourly wage shall be determined by dividing the total of the hours worked during the week into the employee's total earnings exclusive of part time bonuses for the week and exclusive of wages earned at overtime rates as such rates are defined.

(d) The total computed earnings shall include commissions, bonuses, and all compensation paid by the employer except overtime pay.

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12:57-5.6 Waiting time

Time during regular working hours and at other periods when employees are required to wait on the premises and no work is provided by the employer shall be counted as working time and paid at each employee's regular hourly wage.

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12:57-5.7 Travel time

An employee who is required or authorized to travel from one establishment to another after the beginning or before the ending of his or her work day shall be compensated for travel time at not less than the employee's regular hourly wage and shall be reimbursed for travel expenses.

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12:57-5.8 Piece work

No minor employed on a piece work basis or any basis other than a time basis shall for any week of employment be paid less than the amount that the employee would earn for the hours of employment at the minimum wage applicable.

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12:57-5.9 Individuals with disabilities

No minor whose earning capacity has been impaired by physical or mental disability shall be paid at less than the minimum wage, until a special license, in accordance with the provisions of N.J.S.A. 34:11-56a17(b), has been obtained by the employer from the Division of Wage and Hour Compliance.

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12:57-5.10 Records

(a) Every employer shall keep the following records for each minor employee:

1. Full name, address, and occupational classification;

2. Date of birth;

3. A true and accurate record of hours worked each day, including a record of starting and stopping time, meal periods, total daily and weekly hours, and amount of wages paid for each pay period;

4. Such other records as are essential in determining an employee's regular hourly wage and the amount of overtime wages earned and paid.

(b) Records shall be dated showing the payroll ending date by month, day and year, and all records shall be kept so as to enable representatives of the Division of Wage and Hour Compliance to determine readily whether or not the employer is complying with the orders of the Commissioner.

(c) Such records shall be open to inspection by the Commissioner at any reasonable time, and sworn copies shall be supplied to the Commissioner upon demand.

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12:57-5.11 Posting

A notice issued by the Division of Wage and Hour Compliance setting forth the provisions of this subchapter shall be posted in a conspicuous place in every room where minors are employed at laundry, cleaning, and dyeing occupations.

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SUBCHAPTER 6. LIGHT MANUFACTURING AND APPAREL OCCUPATIONS

12:57-6.1 Scope

This subchapter shall apply to the minimum wage rates paid to all minors engaged in light manufacturing and apparel occupations regardless of the nature of the business of the employer or the location of the place where the work is being performed.

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12:57-6.2 Definitions

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

"Apparel industry" means the making or otherwise producing of apparel, designed or intended to be worn by any individual.

"Light manufacturing" means a type of employment where the process or operation of making wares or any material produced and within compliance of the prohibitive occupations for minors as cited at N.J.S.A. 34:2-21.17 regardless of the location of the place where the work is being performed.

"Minimum wage" means the current statutory minimum wage rate as cited at N.J.S.A. 34:11-56a.4.

"Minor" means a person under the age of 18 years old.

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12:57-6.3 Minimum wage rate

Minors employed in the apparel industry or light manufacturing as defined in N.J.A.C. 12:57-6.2 shall be paid not less than the statutory minimum wage rate.

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12:57-6.4 Wage rate

Overtime, at the rate of not less than one and one-half times the regular rate at which the employee is actually employed, shall be paid to each minor for hours worked in excess of 40 in any one week, except that the overtime rate shall not apply to an executive, professional or administrative employee who is paid for his or her services in accordance with N.J.A.C. 12:56-7.

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12:57-6.5 Piece work

Minors employed on a piece work basis shall be employed at piece work rates which yield to each such employee rates not less than the applicable statutory minimum wage rate.

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12:57-6.6 Waiting time

No minor required to report for work shall be paid for less than one hour in any one day at the basic hourly rate of pay.

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12:57-6.7 Individuals with disabilities

No minor whose earning capacity has been impaired by physical or mental disability shall be paid at less than the minimum wage, until a special license, in accordance with the provisions of N.J.S.A. 34:11-56a17(b), has been obtained by the employer from the Division of Wage and Hour Compliance.

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12:57-6.8 Posting

This subchapter or an abstract thereof shall be posted in a conspicuous place in every room where minors are employed at the occupations covered by this subchapter. A copy of such abstract may be obtained from:

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

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

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

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

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CHAPTER 69 EARNED SICK LEAVE RULES
SUBCHAPTER 1. GENERAL PROVISIONS

12:69-1.1 Purpose; scope

(a) The purpose of this chapter is to implement P.L. 2018, c. 10 (the Act), which requires that every employer shall provide earned sick leave to each employee working for the employer in New Jersey and which establishes the manner in which such sick leave shall be accrued or advanced, used, paid, paid out, and carried over.

(b) The chapter is applicable to all employers and employees.

(c) An employer shall be in compliance with the Act if the employer provides each employee with paid time off (PTO), which may include leave types other than sick, such as personal leave and vacation leave, so long as the PTO meets or exceeds all of the requirements in the Act; that is, an employee must be permitted to use all of the PTO for any of the purposes set forth at N.J.A.C. 12:69-3.5(a), and the employer's PTO program must meet or exceed the other requirements of the Act and this chapter, including, but not limited to:

1. Accrual in accordance with N.J.A.C. 12:69-3.3 or advancing in accordance with N.J.A.C. 12:69-3.4;

2. Use in accordance with N.J.A.C. 12:69-3.5;

3. Payment in accordance with N.J.A.C. 12:69-3.6; and

4. Payout and carry-over in accordance with N.J.A.C. 12:69-3.7.

(d) No provision of this chapter shall be construed as:

1. Requiring an employer to reduce, or justifying an employer in reducing, rights or benefits provided by the employer pursuant to an employer policy or collective bargaining agreement that are more favorable to employees than those required by the Act or this chapter or which provide rights or benefits to employees not covered by the Act or this chapter;

2. Preventing or prohibiting the employer from agreeing, through a collective bargaining agreement or employer policy, to provide rights or benefits that are more favorable to employees than those required by the Act or this chapter or to provide rights or benefits to employees not covered by this Act or this chapter;

3. Prohibiting an employer from establishing a policy whereby an employee may donate unused accrued earned sick leave to another employee or other employees; or

4. Superseding any law providing collective bargaining rights for employees, or in any way reducing, diminishing, or adversely affecting those collective bargaining rights, or in any way reducing, diminishing, or affecting the obligations of employers under those laws.

(e) Employees or employee representatives may waive the rights or benefits provided under the Act or this chapter during the negotiation of a collective bargaining agreement.

(f) With respect to employees covered by a collective bargaining agreement in effect on October 29, 2018, no provision of the Act or this chapter shall apply until the stated expiration of the collective bargaining agreement.

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12:69-1.2 Violations

(a) A violation of the Act and this chapter 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 record required to be so made, kept, and preserved 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 to the Commissioner, on demand, a sworn statement of such record or any other information required for the proper enforcement of this chapter;

6. Fails to provide earned sick leave to each employee in the amount and in the manner prescribed in the Act or this chapter;

7. Takes a retaliatory personnel action or discriminates against an employee in violation of the Act or this chapter; or

8. Otherwise violates any provision of the Act or this chapter or of any order issued under the Act or this chapter.

(b) Any employer who knowingly and willfully violates any provision of the Act or this chapter shall be guilty of a disorderly person 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 not provided earned sick leave in the amount and in the manner prescribed in the Act or this chapter and each employee so affected, shall constitute a separate offense.

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12:69-1.3 Administrative penalties

(a) As an alternative to, or in addition to, any other sanctions provided for in N.J.A.C. 12:69-1.2, when the Commissioner finds that an employer has violated the Act or this chapter, the Commissioner is authorized to assess and collect an administrative penalty in the amounts that follow:

1. First violation-not more than $ 250.00; and

2. Second and subsequent violation-not less than $ 250.00, nor more than $ 500.00.

(b) No administrative penalty shall be levied pursuant to this section, 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 the final order. Failure to pay such wages due, fees, and/or penalties 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 and Workforce Development, Wage and Hour Trust Fund, in the form of a certified check or money order, or such other form that is suitable to the Commissioner.

(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 violation(s):

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 that the Commissioner deems to be appropriate in determining the penalty assessed.

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12:69-1.4 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 earned 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 under the Act.

(c) A schedule of the administrative fees follows:

1. First violation-10 percent of the amount of any payment made to the Commissioner pursuant to this chapter;

2. Second violation-18 percent of the amount of any payment made to the Commissioner pursuant to this chapter; and

3. Third and subsequent violations-25 percent of the amount of any payment made to the Commissioner pursuant to this chapter.

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12:69-1.5 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 owned to an employee;

2. Where an equitable remedy is required in order to recover the loss of the present value of the 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 set forth in New Jersey Court Rules, Rule 4:42-11.

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12:69-1.6 Hearings

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:69-1.3, 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 a formal hearing must be received within 15 business days following receipt of the notice. All hearings shall be held pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-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 dispute may be resolved 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 may, for good cause shown, reschedule the hearing.

(g) If the Commissioner does not authorize such a hearing to be rescheduled under (f) above, then the Commissioner shall issue a final agency determination.

(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 costs, in a summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

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12:69-1.7 Retaliatory personnel actions and discrimination prohibited

(a) No employer shall take any retaliatory personnel action or discriminate against an employee because the employee requests or uses earned sick leave in accordance with the Act or this chapter or the employer's own earned sick leave policy, or because the employee files a complaint with the Department alleging that the employer violated any provision of the Act or this chapter, or because the employee informs any other person of his or her rights under the Act or this chapter.

(b) No employer shall count legitimate use of earned sick leave under the Act or this chapter as an absence that may result in the employee being subject to discipline, discharge, demotion, suspension, loss or reduction of pay, or any other adverse action. This includes "no fault" attendance policies, whereby an employee receives a point or a demerit for any absence, no matter the reason, and are subjected to discipline or are foreclosed from a promotional opportunity(ies) after the accumulation of a certain number of points or demerits.

(c) There shall be a rebuttable presumption of an unlawful retaliatory personnel action whenever an employer takes adverse action against an employee within 90 days of when that employee either:

1. Files a complaint with the Department or a court alleging a violation of any provision of this section;

2. Informs any person about an employer's alleged violation of this section;

3. Cooperates with the Department or other persons in the investigation or prosecution of any alleged violation of this section;

4. Opposes any policy, practice, or act that is prohibited under this section; or

5. Informs any person of his or her rights under this section.

(d) The protections of this section shall apply to any person who mistakenly, but in good faith, alleges a violation of the Act or this chapter.

(e) An employer who violates any provision of this section shall be guilty of a disorderly person 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 of employment to any discharged employee and to correct any retaliatory personnel action, and also to pay to any such employee in full, all wages lost as a result of such discharge or retaliatory personnel action, under penalty of contempt proceedings for failure to comply with such requirement.

(f) As an alternative to, or in addition to, any sanctions imposed under (e) above, the Commissioner is authorized under P.L. 2018, c. 10, Section 5, and N.J.S.A. 34:11-56a24 to assess and collect administrative penalties as provided for in N.J.A.C. 12:69-1.3.

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12:69-1.8 Records

(a) An employer shall retain for a period of five years, all records documenting hours worked by employees and earned sick leave accrued/advanced (N.J.A.C. 12:69-3.3 and 3.4), used (N.J.A.C. 12:69-3.5), paid (N.J.A.C. 12:69-3.6), and paid out and carried over (N.J.A.C. 12:69-3.7) by/to employees.

1. The employer is not required to maintain (or, therefore, retain) records documenting hours worked with regard to an employee who is exempt under either the Federal Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., or the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a et seq., and for whom the employer either advances earned sick leave under N.J.A.C. 12:69-3.4, or for whom, under N.J.A.C. 12:69-3.3(c), the employer chooses to presume solely for the purpose of calculating earned sick leave accrual that the employee works 40 hours per week.

(b) The records described in (a) above shall be kept at the place of employment or in a central office in New Jersey and shall be open to inspection by the Commissioner at any reasonable time.

(c) If an employee files a claim that the employer has failed to properly accrue, advance, permit the use of, pay, payout, or carry-over earned sick leave under the Act or this chapter and the employer has not maintained or retained adequate records documenting hours worked by the employee and earned sick leave accrued/advanced, used, paid, paid out, and carried over by/to the employee or has not allowed the Commissioner access to the records, it shall be presumed, absent clear and convincing evidence to the contrary, that the employer has violated the Act.

(d) Any information an employer possesses regarding the health of an employee or any family member of the employee or domestic or sexual violence affecting an employee or employee's family member shall be treated as confidential and not disclosed, except to the affected employee or with the written permission of the affected employee.

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12:69-1.9 Notification to employees

(a) Each employer shall conspicuously post in a place or places accessible to all employees in each of the employer's workplaces, the notification issued by the Commissioner, which shall be posted by the Commissioner on the Department's website and made available in hard copy upon request, and which shall include the amount of earned sick leave to which employees are entitled, the terms of its

use, and remedies provide in the Act and this chapter to employees, if an employer fails to provide the required earned sick leave or retaliates against an employee for exercising his or her rights under the Act or this chapter.

(b) Each employer shall provide each employee a written copy of the notification referred to in (a) above:

1. Not later than 30 days after the form of the notification is issued by the Commissioner;

2. At the time of the employee's hiring, if the employee is hired after the issuance of the notification by the Commissioner; and

3. Upon the first request of an employee.

(c) In the event that an employer has an internet site or intranet site for exclusive use by its employees and to which all employees have access, posting of the notification referred to in (a) above on the employer's internet site or intranet site shall satisfy the conspicuous posting requirement set forth in (a) above.

(d) Providing to an employee via e-mail the notification referred to in (a) above shall satisfy the requirement in (b) above, that the employer provide each employee a written copy of the notification.

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12:69-1.10 Independent contractor status

The criteria identified in the Unemployment Compensation Law at N.J.S.A. 43:21-19(i)(6)(A), (B), and (C), commonly referred to as the "ABC test," and the case law interpreting and applying the ABC test to potential employment relationships shall be used to determine whether an individual is an employee or an independent contractor under the Act and this chapter.

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12:69-1.11 Processing of complaints

Any complaint filed with the Division that alleges a violation of the Act or this chapter shall be processed in the same manner as a complaint filed with the Division under the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a et seq., and the rules promulgated thereunder.

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12:69-1.12 Applicability of N.J.S.A. 34:1A-1.11 et seq.

P.L. 2018, c. 10, Section 5, states that any failure of an employer to make available or pay earned sick leave as required by the Act, or any other violation of the Act, shall be regarded as a failure to meet the wage payment requirements of the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a et seq. Consequently, a violation of the Act would be considered a violation of a "State wage, benefit and tax law," as that term is defined within N.J.S.A. 34:1A-1.11, thereby empowering the Commissioner on the basis of a violation of the Act, under the provisions of N.J.S.A. 34:1A-1.11 et seq., and the conditions set forth therein, to issue, where appropriate, a written determination directing an agency to suspend or permanently revoke any one or more licenses that are held by the employer or a successor firm.

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SUBCHAPTER 2. DEFINITIONS

12:69-2.1 Definitions

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

"Act" means P.L. 2018, c. 10.

"Benefit year" means the period of 12 consecutive months established by an employer in which an employee shall accrue and use earned sick leave.

"Certified Domestic Violence Specialist" means a person who has fulfilled the requirements of certification as a Domestic Violence Specialist established by the New Jersey Association of Domestic Violence Professionals.

"Child" means a biological, adopted, or foster child, stepchild or legal ward of an employee, or child of a domestic partner or civil union partner of the employee.

"Civil union" means a civil union as defined in N.J.S.A. 37:1-29.

"Collective bargaining agreement" means an agreement between an employer and a labor union that regulates terms and conditions of employment.

"Commissioner" means the Commissioner of the Department of Labor and Workforce Development or his or her designee.

"Department" means the Department of Labor and Workforce Development.

"Designated domestic violence agency" means a county-wide organization with a primary purpose to provide services to victims of domestic violence, and which provides services that conform to the core domestic violence services profile as defined by the Division of Child Protection and Permanency in the Department of Children and Families and is under contract with that division for the express purpose of providing the services.

"Division" means the Division of Wage and Hour Compliance within the Department of Labor and Workforce Development.

"Domestic or sexual violence" means stalking, any sexually violent offense, as defined in N.J.S.A. 30:4-27.26, or domestic violence as defined in N.J.S.A. 2C:25-19 and 17:29B-16.

"Domestic partner" means a domestic partner as defined in N.J.S.A. 26:8A-3.

"Employee" means an individual engaged in service for compensation to an employer in the business of the employer who performs that service in New Jersey. The term "employee" does not include the following:

1. An individual engaged in service for compensation in the construction industry under contract pursuant to a collective bargaining agreement;

2. A per diem health care employee; or

3. A public employee who is provided with sick leave at full pay pursuant to any other law or rule of New Jersey.

"Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, or other entity that employs employees in New Jersey, including a temporary help service firm. In the case of a temporary help service firm placing an employee with client firms, earned sick leave shall accrue on the basis of the total time worked on assignment with the temporary help service firm, not separately for each client firm to which the employee is assigned. The term "employer" does not include a public employer that is required to provide its employees with sick leave with full pay pursuant to any other law, rule, or regulation of New Jersey.

"Family member" means a child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, or grandparent of an employee, or a spouse, domestic partner, or civil union partner of a parent or grandparent of the employee, or a sibling of a spouse, domestic partner, or civil union partner of the employee, or any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.

1. For the purpose of this definition, an individual whose "close association with the employee is the equivalent of a family relationship" shall include any person with whom the employee has a significant personal bond that is, or is like, a family relationship, regardless of biological or legal relationship.

"Health care professional" means any person licensed under Federal, State, or local law, or the laws of a foreign nation, to provide health care services, or any other person who has been authorized to provide health care by a licensed health care professional, including, but not limited to doctors, nurses, and emergency room personnel.

"Hours worked" means "hours worked," as that phrase is defined within N.J.A.C. 12:56-5.

"Parent" means a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or of the employee's spouse, domestic partner, or civil union partner, or a person who stood in *loco parentis* of the employee or the employee's spouse, domestic partner, or civil union partner when the employee, spouse, or partner was a minor child.

"Per diem health care employee" means any:

1. Health care professional licensed in New Jersey employed by a health care facility licensed by the New Jersey Department of Health;

2. Individual that is in the process of applying to the New Jersey Division of Consumer Affairs for a license to provide health care services, who is employed by a health care facility licensed by the New Jersey Department of Health; or

3. A first aid, rescue, or ambulance squad member employed by a hospital system, who:

i. Works on an as-needed basis to supplement a health care employee, or to replace or substitute for a temporarily absent health care employee;

ii. Works only when the employee indicates that the employee is available to work, and has no obligation to work when the employee does not indicate availability; and

iii. Either has:

(1) The opportunity for full-time or part-time employment in his or her scope of practice under that healthcare provider, which offers under the terms of employment earned time off benefits greater in length than provided under the Act; or

(2) Waived earned sick leave as provided under the Act under terms of employment for alternative benefits or consideration.

The term "per diem health care employee" shall not include any individual who is certified as a homemaker-home health aide.

"Retaliatory personnel action" means denial of any right guaranteed under the Act and any threat, discharge (including a constructive discharge), suspension, demotion, unfavorable reassignment, refusal to promote, disciplinary action, sanction, reduction of work hours, reporting or threatening to report the actual or suspected immigrant status of an employee or the employee's family, or any other adverse action against an employee.

"Sibling" means a biological, foster, or adopted sibling of an employee.

"Spouse" means a husband or wife.

"State minimum wage rate" means the minimum wage set forth at N.J.A.C. 12:56-3.1.

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SUBCHAPTER 3. BENEFIT YEAR; EARNED SICK LEAVE ACCRUAL, USE AND PAYMENT

12:69-3.1 Benefit year: establishment; notification to Commissioner of proposed change; imposition by the Commissioner

(a) (Reserved)

(b) In the event the employer proposes to change the benefit year, the employer shall provide notice to the Commissioner at least 30 calendar days prior to the proposed change.

(c) Notice under (b) above shall:

1. Be in writing;

2. Specify the existing benefit year;

3. Specify the proposed new benefit year;

4. Indicate the effective date of the new benefit year;

5. Indicate the reason for the change in benefit year; and

6. Include a current list of employees with corresponding contact information, including phone number and home address, and a corresponding history of accrual, use, payment, payout, and carry-over of earned sick leave for each employee for the preceding two benefit years.

(d) Where, based on an evaluation of the information contained in the notification provided under (c) above and any other information obtained by the Commissioner, the Commissioner determines that the employer is proposing a change to the benefit year at a time or in a way that would prevent the accrual or use of earned sick leave by an employee, the Commissioner shall impose a benefit year on the employer.

(e) Where a benefit year has been imposed by the Commissioner upon an employer under (d) above, the employer shall not be eligible to submit a subsequent notification of proposed change to the benefit year prior to one year from the date of the earlier notification.

(f) When the Commissioner imposes a benefit year upon an employer under (d) above, the employer shall have the right to file an appeal.

(g) An appeal under (f) above must be received by the Commissioner within 15 business days following receipt by the employer of notification of the imposed benefit year under (d) above.

(h) The Commissioner shall decide any appeal filed under (f) above on the written record or shall provide a hearing in accordance with N.J.A.C. 12:69-1.6.

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12:69-3.2 Earned sick leave requirement

Each employer shall provide earned sick leave to each employee, using either the accrual method under N.J.A.C. 12:69-3.3 or the advancing method under N.J.A.C. 12:69-3.4, which leave shall be for use by the employee for the reasons set forth at, and in the manner prescribed under, N.J.A.C. 12:69-3.5, to be paid in the manner prescribed under N.J.A.C. 12:69-3.6 and subject to the rules governing payout and carry-over at N.J.A.C. 12:69-3.7.

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12:69-3.3 Earned sick leave; accrual

(a) For every 30 hours worked, the employee shall accrue one hour of earned sick leave.

(b) The employer shall not be required to permit the employee to accrue more than 40 hours of earned sick leave in any benefit year.

(c) Where the employer does not record hours worked for a particular employee because the employee is an exempt employee under either the Federal Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., or the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a et seq., the employer may either:

1. Record the actual hours worked for that employee for the purpose of calculating earned sick leave accrual; or

2. Presume, solely for the purpose of calculating earned sick leave accrual, that the employee works 40 hours per week.

(d) For an employee who commences employment on or before October 29, 2018, earned sick leave shall begin to accrue no later than October 29, 2018.

(e) For an employee who commences employment after October 29, 2018, earned sick leave shall begin to accrue on the date that the employment commences.

(f) Where an employee has been transferred to a separate division, entity, or location, but remains employed in New Jersey by the same employer, the employee shall retain all earned sick leave that was accrued while working with the prior division, entity, or location.

(g) Where an employee is terminated, laid off, furloughed, or otherwise separated from employment with the employer and where the employee is reinstated or rehired to that employment in New Jersey within six months of the separation, any unused earned sick leave accrued by the employee prior to the separation shall be returned to the employee upon rehire or reinstatement.

(h) Where a successor employer takes the place of an existing employer, all employees of the predecessor employer shall retain all earned sick leave accrued while working for the predecessor employer.

1. There shall be a rebuttable presumption of successorship if the two parties (the predecessor firm and the successor firm) share two or more of the following capacities or characteristics

i. Performing similar work within the same geographical area;

ii. Occupying the same premises;

iii. Having the same telephone or fax number;

iv. Having the same e-mail address or Internet website;

v. Employing substantially the same work force, administrative employees, or both;

vi. Utilizing the same tools, equipment, or facilities;

vii. Employing, or engaging the services of, any person or persons involved in the direction or control of the other; or

viii. Listing substantially the same work experience.

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12:69-3.4 Earned sick leave; accrual

(a) Rather than use the accrual method under N.J.A.C. 12:69-3.3, an employer may, on the first day of the benefit year, provide the employee with no less than 40 hours of earned sick leave for use throughout the benefit year.

(b) Where an employee has been transferred to a separate division, entity, or location, but remains employed in New Jersey by the same employer, the employee shall retain all earned sick leave advanced while working with the prior division, entity, or location.

(c) Where an employee is terminated, laid off, furloughed, or otherwise separated from employment with the employer and where the employee is reinstated or rehired in New Jersey within six months of the separation, any unused earned sick leave advanced by the employee prior to the separation shall be returned to the employee upon rehire or reinstatement.

(d) Where a successor employer takes the place of an existing employer, all employees of the predecessor employer shall retain all earned sick leave advanced while working for the predecessor employer.

1. There shall be a rebuttable presumption of successorship if the two parties (the predecessor firm and the successor firm) share two or more of the capacities or characteristics listed at N.J.A.C. 12:69-3.3(h)1.

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12:69-3.5 Earned sick leave; use

(a) An employer shall permit an employee to use earned sick leave for any of the following reasons:

1. Time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury, or other adverse health condition, or for preventative medical care for the employee;

2. Time needed for the employee to aid or care for a family member of the employee during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury, or other adverse health condition, or during preventative medical care for the family member;

3. Absence necessary due to circumstances resulting from the employee, or a family member of the employee, being a victim of domestic or sexual violence, if the leave is to allow the employee to obtain for the employee or the family member; medical attention needed to recover from physical or psychological injury or disability caused by domestic or sexual violence; services from a designated

domestic violence agency or other victim services organization; psychological or other counseling; relocation; or legal services, including obtaining a restraining order or preparing for, or participating in, any civil or criminal proceeding related to the domestic or sexual violence;

4. Time during which the employee is not able to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, by order of a public official due to an epidemic or other public health emergency, or because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others; or

5. Time needed by the employee in connection with a child of the employee to attend a school-related conference, meeting, function, or other event requested or required by a school administrator, teacher, or other professional staff member responsible for the child's education, or to attend a meeting regarding care provided to the child in connection with the child's health condition or disability.

(b) Except under (d) or (e) below, an employee shall not be eligible to use earned sick leave until the 120th calendar day after the employee commences employment.

(c) Following the 120-calendar-day period set forth in (b) above, the employee shall be permitted to use earned sick leave immediately upon either accrual under N.J.A.C. 12:69-3.3 or the earned sick leave having been advanced to the employee under N.J.A.C. 12:69-3.4.

(d) Where the employee has accrued earned sick leave prior to October 29, 2018, the 120-calendar-day waiting period for use of earned sick leave set forth in (b) above shall not apply.

(e) The employer may permit an employee to use earned sick leave prior to the 120-calendar-day period set forth in (b) above.

(f) Where the employee's need to use earned sick leave is foreseeable, the employer may require advance notice, not to exceed seven calendar days prior to the date the leave is to begin, of the employee's intention to use the leave and its expected duration.

1. For purposes of this subsection, the need to use earned sick leave shall be considered "foreseeable," when the employee is able to predict or know in advance that he or she will need to use earned sick leave, such as a scheduled doctor's visit, a regularly occurring medical treatment, or regularly scheduled therapy appointment.

(g) Where the employee's need to use earned sick leave is foreseeable, the employee shall make a reasonable effort to schedule the use of earned sick leave in a manner that does not unduly disrupt the operations of the employer.

1. For purposes of this subsection, the need to use earned sick leave shall be considered "foreseeable," when the employee is able to predict or know in advance that he or she will need to use earned sick leave, such as a scheduled doctor's visit, a regularly occurring medical treatment, or regularly scheduled therapy appointment.

(h) Where the employee's need to use earned sick leave is foreseeable, the employer may prohibit the employee from using earned sick leave on certain dates.

1. For purposes of this subsection, the need to use earned sick leave shall be considered "foreseeable," when the employee is able to predict or know in advance that he or she will need to use earned sick leave, such as a scheduled doctor's visit, a regularly occurring medical treatment, or regularly scheduled therapy appointment.

2. The "certain dates" on which the employer may prohibit employees from using foreseeable earned sick leave shall be limited to verifiable high-volume periods or special events, during which permitting the use of foreseeable earned sick leave would unduly disrupt the operations of the employer.

i. An example of a high-volume period would be, for an airline industry employer, the period during which they experience a predictable increase in customer activity (which is to say, flying) in and around a particular holiday, like Thanksgiving.

ii. An example of a special event would be, for a manufacturer of retail products, the day or week during which it is making a new product available for the first time (that is, a product launch).

3. The employer shall provide reasonable notice to its employees of those "certain dates" on which its employees are prohibited from using foreseeable earned sick leave.

i. Where the employee's need to use earned sick leave is not foreseeable, the employer may require an employee to provide notice as soon as practicable, of the employee's intention to use the leave and its expected duration.

1. For purposes of this subsection, the need to use earned sick leave shall be considered "not foreseeable," when an employee requires time to care for, or obtain medical treatment for, themselves or a family member that was not reasonably anticipated.

i. An example of a need to use earned sick leave that is "not foreseeable," is when an employee wakes up in the morning with a fever and does not feel well enough to report for work that morning.

2. As a condition to requiring an employee to provide notice to the employer of the need to use earned sick leave that is not foreseeable, the employer must first notify the employee of this requirement. Where the employer has failed to so notify the employee, the employee must be permitted to use the "not foreseeable" earned sick leave without having provided the employer with any prior notice, practicable, or otherwise.

(j) Where the employee's need to use earned sick leave is not foreseeable and the employee seeks to use such earned sick leave during any of the "certain dates" described in (h) above, or where the employee uses earned sick leave for three or more consecutive days, the employer may require the employee to provide reasonable documentation that the leave is being taken for a permissible purpose under (a) above.

1. The term "reasonable documentation" shall have the following meanings under the following circumstances:

2. If the earned sick leave is sought by the employee under (a)1 or 2 above, "reasonable documentation" shall mean documentation signed by a health care professional who is treating the employee or the family member of the employee indicating the need for the leave and, if possible, the duration of the leave;

3. If the earned sick leave is sought by the employee under (a)3 above, "reasonable documentation" shall mean medical documentation; a law enforcement agency record or report; a court order; documentation that the perpetrator of the domestic or sexual violence has been convicted of a domestic or sexual violence offense; certification from a certified Domestic Violence Specialist or a representative of a designated domestic violence agency or other victim services organization; or other documentation or certification provided by a social worker, counselor, member of the clergy, shelter worker, health care professional, attorney, or other professional who has assisted the employee or family member in dealing with the domestic or sexual violence;

iii. If the earned sick leave is sought by the employee under (a)4 above, "reasonable documentation" shall mean a copy of the order of the public official or the determination by the health authority;

1. If the earned sick leave is sought by the employee under (a)5 above, "reasonable documentation" shall mean tangible proof of the school-related conference, meeting, function, or other event requested or required by a school administrator, teacher, or other professional staff member responsible for the education of the employee's child; or tangible proof of the meeting regarding care provided to the child of the employee in connection with the child's health conditions or disability.

(k) Except where an employer exercises its right, under the limited circumstances outlined in (j) above, to require the employee to provide reasonable documentation that the leave is being taken for a permissible purpose under (a) above, (that is, foreseeable earned sick leave during the "certain dates" described in (h) above, or requests for three or more days of earned sick leave), all requests by employees to use earned sick leave shall be treated by the employer as presumptively valid.

(l) Where an employee would be eligible to use earned sick leave under the Act and this chapter, the employee may, only with the employer's consent, choose to work additional hours to compensate for the hours of work missed, rather than use earned sick leave.

(m) Where an employee would be eligible to use earned sick leave under the Act and this chapter, the employer shall be prohibited from:

1. Requiring an employee to work additional hours to compensate for the hours of work missed;
2. Requiring an employee to use earned sick leave; or
3. Requiring an employee, as a condition to using earned sick leave, to search for or find a replacement worker to cover the hours during which the employee will be using earned sick leave.

(n) Where an employee has been transferred to a separate division, entity, or location, but remains employed by the same employer, and where, pursuant to N.J.A.C. 12:69-3.3(f) or 3.4(b), the employee has retained all earned sick leave accrued or advanced while working with the prior division, entity, or location, the employee's entitlement to use the accrued or advanced earned sick leave shall not be adversely affected.

1. For example, if prior to a transfer to a separate division of the employer, the employee had worked for the employer for more than 120 calendar days, the employee would immediately upon the transfer be permitted to use his or her accrued or advanced earned sick leave and would not be required to wait

120 calendar days after the transfer had occurred to use his or her accrued or advanced earned sick leave.

(o) Where an employee is terminated, laid off, furloughed, or otherwise separated from employment with the employer, where the employee is reinstated or rehired within six months of the separation, and where pursuant to N.J.A.C. 12:69-3.3(g) or 3.4(c), any unused earned sick leave accrued or advanced by the employee prior to the separation has been returned to the employee upon rehire or reinstatement, the employee's entitlement to use the accrued or advanced earned sick leave shall not be adversely affected; which is to say, the employee shall be treated for the purpose of using his or her accrued or advanced earned sick leave as if there had been no break in employment.

(p) Where a successor employer takes the place of an existing employer, and where pursuant to N.J.A.C. 12:69-3.3(h) or 3.4(d), all employees of the predecessor employer have retained all earned sick leave accrued or advanced while working for the predecessor employer, the employee's entitlement to use accrued or advanced earned sick leave shall not be adversely affected.

1. For example, if prior to a transfer to a separate division of the employer, the employee had worked for the employer for more than 120 calendar days, the employee would immediately upon the transfer be permitted to use his or her accrued or advanced earned sick leave and would not be required to wait 120 calendar days after the transfer had occurred to use his or her accrued or advanced earned sick leave.

(q) An employer may choose the increments in which its employees may use earned sick leave, provided that the largest increment of earned sick leave that an employee may be required to use for each shift for which earned sick leave is used shall be the number of hours the employee was scheduled to work during that shift.

(r) Nothing in this chapter shall be construed to require an employer to permit the use of earned sick leave for a purpose other than one identified in (a) above.

(s) Nothing in this chapter shall be construed to prohibit an employer from taking disciplinary action against an employee who uses earned sick leave for a purpose other than one identified in (a) above.

(t) The employer shall not be required to permit the employee to use more than 40 hours of earned sick leave in any benefit year.

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12:69-3.6 Earned sick leave; payment

(a) The employer shall pay the employee for earned sick leave at the same rate of pay as the employee normally earns.

(b) The taking of earned sick leave by the employee shall not result in any diminution in the employee's benefits; in other words, for the purpose of employee benefits, when an employee takes earned sick leave, it shall be as if the employee worked those hours.

(c) Under no circumstances during a period of earned sick leave may an employer pay an employee less than the State minimum wage rate.

(d) Where an employee has two or more different jobs for the same employer or if an employee's rate of pay fluctuates for the same job, the rate of pay for earned sick leave shall be the amount that the employee is regularly paid for each hour of work as determined by adding together the employee's total earnings, exclusive of overtime premium pay, for the seven most recent workdays when the employee did not take leave and dividing that sum by the total hours of work during that seven-day period.

(e) Where an employee is paid by commission, whether base wage plus commission or commission only, the employer must pay the employee during earned sick leave an hourly rate that is the base wage or the State minimum wage rate, whichever is greater.

(f) When an employee is paid on a piecework basis, whether base wage plus piecework or piecework only, to calculate the employee's rate of pay for earned sick leave, the employer shall add together the employee's total earnings for the seven most recent workdays when the employee did not take leave and divide that sum by the number of hours the employee spent performing the work during workdays.

1. When doing this calculation, the employer shall consider workdays to mean the days or parts of days the employee worked.

(g) Where an employee uses earned sick leave during hours that would have been overtime if worked, the employer is not required to pay the overtime rate of pay.

(h) When the employee's pay includes the value of gratuities, food, or lodging, to calculate the employee's rate of pay for earned sick leave, the employer shall add together the employee's total earnings, exclusive of overtime premium pay, for the seven most recent workdays when the employee did not take leave and divide that sum by the number of hours the employee spent performing the work during workdays.

1. Where the employee's pay includes the value of gratuities, food, or lodging and it is not feasible to determine the employee's exact hourly wage for earned sick leave purposes using the method described in (h) above, the employer shall be deemed to have fulfilled the requirement of this section regarding the payment of earned sick leave if the rate of pay for earned sick leave is based on the agreed hourly wage, but in no event shall earned sick leave be paid at a rate less than the State minimum wage rate.

(i) Where the amount of a bonus is wholly within the discretion of the employer, the employer is not required to include the bonus when determining the employee's rate of pay for earned sick leave purposes.

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12:69-3.7 Payout and carry-over of earned sick leave

(a) Where the employer provides earned sick leave to its employees using the accrual method under N.J.A.C. 12:69-3.3, the following applies relative to payout and carry-over of earned sick leave:

1. In the final month of the employer's benefit year, the employer may provide an offer to an employee for payout of unused earned sick leave.

2. The employee may accept the employer's payout offer within 10 calendar days from the date the offer was made.

3. If the employee does not accept the payout offer within 10 calendar days from the date of the employer's offer, the employee is deemed to have declined the employer's offer.

4. If the employee agrees to receive a payout, the employee shall choose either a payout for the full amount of unused earned sick leave or for 50 percent of the amount of unused earned sick leave.

5. If the employee declines a payout of unused earned sick leave or agrees to a payout of 50 percent of the amount of unused earned sick leave, the employee shall be entitled to carry forward to the following benefit year any unused earned sick leave, except that the employer shall not be required to permit the employee to carry forward from one benefit year to the next, more than 40 hours of earned sick leave.

6. If the employee agrees to a payout of the full amount of unused earned sick leave, the employee shall not be entitled to carry forward to the following benefit year any unused earned sick leave.

7. The payout amount shall be based on the rate of pay that the employee is earning at the time of the payout.

i. Where an employee has two or more different jobs for the same employer or if an employee's rate of pay fluctuates for the same job, the rate of pay for the payout of unused earned sick leave shall be the amount that the employee is regularly paid for each hour of work as determined by adding

together the employee's total earnings, exclusive of overtime premium pay, for the seven most recent workdays when the employee did not take leave and dividing that sum by the total hours of work during that seven-day period.

ii. Where an employee is paid by commission, whether base wage plus commission or commission only, the rate of pay for the payout of unused earned sick leave shall be an hourly rate that is the base wage or the State minimum wage rate, whichever is greater.

iii. When an employee is paid on a piecework basis, whether base wage plus piecework or piecework only, to calculate the employee's rate of pay for payout of unused earned sick leave, the employer shall add together the employee's total earnings for the seven most recent workdays when the employee did not take leave and divide that sum by the number of hours the employee spent performing the work during workdays. When doing this calculation, the employer shall consider workdays to mean the days or parts of days the employee worked

(b) Where the employer provides earned sick leave to its employees using the advancing method under N.J.A.C. 12:69-3.4, the following applies relative to payout and carry-over of earned sick leave:

1. In the final month of the employer's benefit year, the employer shall either provide to the employee a payout for the full amount of unused earned sick leave or permit the employee to carry-over any unused earned sick leave, except that the employer shall not be required to permit the employee to carry forward from one benefit year to the next, more than 40 hours of earned sick leave.

2. If the employer provides to the employee a payout for the full amount of unused earned sick leave, the employer may not use the accrual method with respect to that employee during the next benefit year.

(c) Unless an employer policy or collective bargaining agreement provides for the payout of unused earned sick leave upon an employee's termination, resignation, retirement, or other separation from employment, an employee shall not be entitled to a payout of unused earned sick leave upon separation from employment.

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