

**CHAPTER 68****THE OPPORTUNITY TO COMPETE ACT RULES****Authority**

N.J.S.A. 34:1-20 and 34:1A-3(e); and P.L. 2014, c. 32.

**Source and Effective Date**

R.2015 d.178, effective December 7, 2015.  
See: 48 N.J.R. 601(a), 47 N.J.R. 3034(a).

**Chapter Expiration Date**

Chapter 68, The Opportunity to Compete Act Rules, expires on December 7, 2022.

**Chapter Historical Note**

Chapter 68, The Opportunity to Compete Act Rules, was adopted as new rules by R.2015 d.178, effective December 7, 2015. See: Source and Effective Date.

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**SUBCHAPTER 1. GENERAL PROVISIONS****12:68-1.1 Purpose and scope**

(a) The purpose of this chapter is to effectuate P.L. 2014, c. 32.

(b) The chapter is applicable to all employers and applicants for employment, as those terms are defined in N.J.A.C. 12:68-1.2.

**12:68-1.2 Definitions**

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

“A position in corrections” means employment with a State, county, or municipal employer in the supervision of offenders pursuant to sentencing or other judicial disposition, or the supervision of alleged offenders awaiting and/or during formal adjudication; as in corrections officers employed by the State Department of Corrections or the Juvenile Justice Commission; county corrections officers, juvenile detention officers; county probation officers, parole officers employed by the State Parole Board or the Juvenile Justice Commission; and any sheriff, undersheriff, or sheriff’s officer.

“A position in emergency management” means employment with a State, county or municipal employer in the coordination of emergency planning, preparedness, risk reduction, response, and recovery. For the purpose of this definition, the term “emergency” shall include, but not necessarily be limited to, acts of terrorism, sabotage, or other hostile action, public disorder, industrial accidents, communication failures, fire, and natural disasters (such as hurricanes, floods, and earthquakes).

“A position in homeland security, a position in” means employment with the State Office of Homeland Security and Preparedness, or with any other State, county, or municipal counter-terrorism agency.

“A position in law enforcement” means employment:

1. With a government employer, including, but not limited to, a police department or law enforcement agency in a State department, office, or commission, a county sheriff’s office, county prosecutor’s office, or the Divisions of Criminal Justice or State Police, the Juvenile Justice Commission, or the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety;

2. In a position as a police officer, detective, criminal investigator, or other law enforcement officer statutorily empowered to act for the detection, investigation, arrest, or conviction of persons violating the criminal laws of this State.

The phrase, “position in law enforcement,” shall also mean employment as a county prosecutor or assistant county prosecutor in a county prosecutor’s office or as an assistant attorney general or deputy attorney general in the Division of Criminal Justice or the Office of the Insurance Fraud Prosecutor.

“A position in the judiciary” means a Justice of the New Jersey Supreme Court, a Judge of the New Jersey Superior Court, a Judge of the New Jersey Tax Court, or a municipal judge.

“Act” means P.L. 2014, c. 32.

“Advertisement” means any circulation, mailing, posting, or any other form of publication, utilizing any media, promoting an employer or intending to alert its audience, regardless of size, to the availability of any position of employment.

“Applicant for employment” means any person whom an employer considers when identifying potential employees, through any means, including, but not limited to, recruitment, solicitation, or seeking personal information, or any person who requests to be considered for employment by an employer, or who requests information from an employer related to seeking employment, and shall include any person who currently is an employee of the employer.

“Apprentice” means an individual who is registered in good standing in an apprenticeship program approved or certified by the Office of Apprenticeship within the United States Department of Labor.

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

“Criminal record” means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, release, or conviction, including, but not limited to, any sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of probation, or a sentence of conditional discharge.

“Department” means the Department of Labor and Workforce Development.

“Director” means the Director of the Division of Wage and Hour Compliance, within the Department of Labor and Workforce Development, or his or her designee.

“Employee” means a person who is hired for a wage, salary, fee, or payment to perform work for an employer, but excludes any person employed in the domestic service of any family or person at the person’s home, any independent contractors, or any directors or trustees. The term also shall include interns and apprentices, whether paid or unpaid.

“Employer” means any person, company, corporation, firm, labor organization, or association, which has 15 or more employees over 20 calendar weeks, whether those employees work inside or outside of New Jersey, and does business, employs persons, or takes applications for employment within this State, including the State, any county or municipality, or any instrumentality thereof. The term shall include job placement and referral agencies and other employment agencies, but excludes the United States or any of its departments, agencies, boards, or commissions, or any employee or agent thereof.

“Employment” means any occupation, vocation, job, or work with pay, including temporary or seasonal work, contingent work, and work through the services of a temporary or other employment agency; any form of vocational apprenticeship; or any internship. The physical location of the prospective employment shall be in whole, or substantial part, within this State. For the purpose of this definition, the physical location of the prospective employment shall be in substantial part within this State if the employer has reason to believe at the outset of the initial employment application process that the percentage of work hours that will be spent performing work functions within New Jersey by the successful candidate for prospective employment will equal or

exceed 50 percent of the successful candidate’s total work hours.

“Employment application” means a form, questionnaire, or similar document, or collection of documents, that an applicant for employment is required by an employer to complete.

“Fifteen or more employees over 20 calendar weeks” means 15 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

“Initial employment application process” means the period beginning when an applicant for employment first makes an inquiry to an employer about a prospective employment position or job vacancy or when an employer first makes any inquiry to an applicant for employment about a prospective employment position or job vacancy, and ending when an employer has conducted a first interview of an applicant for employment, whether the interview has been conducted in person or by any other means.

“Intern” means an individual, as a student or recent graduate, working as a trainee to gain practical experience in an occupation.

“Interview” means any live, direct contact by the employer with the applicant, whether in person, by telephone, or by video conferencing, to discuss the employment being sought or the applicant’s qualifications. “Interview” shall not mean the exchange of e-mails or the completion of a written or electronic questionnaire.

### 12:68-1.3 Violations

(a) A violation of the Act shall occur when an employer requires an applicant for employment to complete any employment application during the initial employment application process that makes any inquiries regarding an applicant’s criminal record.

(b) A violation of the Act shall occur when an employer makes any oral or written inquiry to anyone, including to the applicant, during the initial employment application process regarding an applicant’s criminal record.

(c) Notwithstanding (a) or (b), above, if an applicant voluntarily discloses, either orally or in writing, during the initial employment application process, any information regarding the applicant’s criminal record, the employer may make inquiries to anyone, including to the applicant, during the initial employment application process regarding the applicant’s criminal record.

(d) Unless otherwise permitted or required by law, an employer shall not knowingly or purposefully publish, or cause to be published, any advertisement that solicits applicants for employment where that advertisement explicitly provides that the employer will not consider any applicant