

Stylistic revisions.
 Amended by R.1995 d.363, effective July 3, 1995.
 See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).
 In (b) deleted the second sentence.

12:35-3.2 Determination of prevailing wage rate

In cases where there are no beginning regular employees similarly employed the Employment Services shall assign a wage rate equal to the minimum wage rate of the State, or shall contact the local labor market analyst and determine the prevailing wage rate for that particular worksite assignment.

Amended by R.1985, d.404, effective August 5, 1985.
 See: 17 N.J.R. 1048(a), 17 N.J.R. 1896(a).
 Deleted hourly wage rate recording.
 Amended by R.1990, d.396, effective August 6, 1990.
 See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).
 Stylistic revisions.
 Amended by R.1995 d.363, effective July 3, 1995.
 See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).
 Inserted "shall assign a wage rate equal to the minimum wage rate of the State, or".

SUBCHAPTER 4. TYPES OF WORK ALLOWABLE UNDER WORKSITE ACTIVITIES

12:35-4.1 Type of work to be performed

The type of work to be performed by an employable general assistance recipient will be based upon an assessment of the individual's employment capabilities and the service needs of the municipality. Whenever possible, worksites will permit an individual to utilize and/or enhance his/her employment capabilities in order to maximize that individual's chances of obtaining unsubsidized employment.

12:35-4.2 Prohibition on replacing or displacing regular employees

Worksite assignments will not result in employable general assistance recipients replacing or displacing regular employees through assignment to work ordinarily and actually performed by regular employees on a permanent or temporary basis.

Amended by R.1995 d.363, effective July 3, 1995.
 See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).
 Substituted the reference to employable general assistance recipients for replacement or displacement of regular employees.

SUBCHAPTER 5. FAILURE TO COMPLY

12:35-5.1 Patterns of behavior

(a) The following actions or patterns of behavior shall constitute a failure or refusal to participate in the General Assistance Employment Program and will result in the

Employment Service making a GA disqualification request to the municipal welfare department:

1. An oral or written statement by a GAEP registrant that he or she will not participate or continue to participate in GAEP or its activities;
2. A registrant refuses a suitable municipal worksite, training worksite or job search orientation assignment without good cause;
3. A registrant refuses a suitable job referral or job offer without good cause;
4. A registrant seriously disrupts a GAEP activity or the orderly administration of the overall program or behaves in a manner that constitutes a threat or hazard to agency staff, project agents and their staff and/or other GAEP registrants;
5. The record and employment history of the registrant shows that he or she has the required education, experience or aptitude to perform the assignment but fails to utilize these skills and experience to benefit from the activity. The determining factors would be the reasonable judgment of the Employment Service as to whether the individual intentionally is performing at or near his or her potential as documented under N.J.A.C. 12:35-1.6(a)1;
6. A registrant fails to make a bona fide application for employment without good cause when asked to do so by the Employment Service or municipal welfare director;
7. A registrant voluntarily leaves a training or rehabilitation worksite before completion of the assignment without good cause;
8. A registrant fails or refuses to respond to two call-in notices without good cause.

Amended by R.1990, d.396, effective August 6, 1990.
 See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).
 In (a) 6, added without good cause and municipal welfare director.
 Amended by R.1995 d.363, effective July 3, 1995.
 See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).
 In (a)2 inserted references to training worksite and job search.

12:35-5.2 Notification of failure to comply

(a) When a determination of failure or refusal to participate is made, the Employment Service shall, within five days of such determination, forward written notification, through the use of the Interagency Report (NJES-1A), to the municipal welfare director.

(b) The municipal welfare director shall determine whether good cause existed for a failure or refusal to participate and shall notify the Employment Service of his or her decision through the use of the NJES-1A. (See the GA Manual at N.J.A.C. 10:85-3.2(g)7, 10:85-10.6-10.7 and 10:85-7.3-7.4).

(c) Participants determined to have failed or refused to participate by the municipal welfare director shall be denied all general assistance according to regulations developed by the Division of Family Development.

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

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

Stylistic revisions.

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

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

Rewrote the section.

SUBCHAPTER 6. PLACEMENT OR USE OF WORK FIRST PARTICIPANTS AT WORKPLACE

Authority

N.J.S.A. 34:1-20, 34:1A-3(c), 44:8-112 and P.L. 1997, c.38.

Source and Effective Date

R.1997 d.401, effective October 6, 1997.

See: 29 N.J.R. 3361(a), 29 N.J.R. 4287(c).

Subchapter Historical Note

Subchapter 6, Placement or Use of Work First Participants at Worksite, was adopted as Emergency New Rules by R.1997 d.310, effective June 30, 1997 (to expire August 29, 1997). The concurrent proposal of R.1997 d.310 was adopted as R.1997 d.401, effective August 28, 1997. See: Source and Effective Date. See, also, section annotations. As part of R.1997 d.401, effective October 6, 1997, Subchapter 6 was renamed Placement or Use of Work First Participants at Workplace.

12:35-6.1 Prohibition on replacing or displacing regular employees

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

1. That was previously filled by a regular employee if the position or a substantially similar position at the workplace has been made vacant through a demotion, substantial reduction of hours or a layoff of a regular employee in the previous 12 months, or has been eliminated by the employer at any time during the previous 12 months;

2. In a manner that infringes upon a wage rate or an employment benefit or violates the contractual overtime provisions of a regular employee at the workplace;

3. In a manner that violates an existing collective bargaining agreement or a statutory provision that applies to the workplace;

4. In a manner that supplants or duplicates a position in an existing, approved apprenticeship program;

5. By or through an employment agency or temporary help service firm as a community work experience or alternative work experience worker;

6. If there is a contractual or statutory recall right to that position at that workplace; or

7. If there is an ongoing strike or lockout at that workplace.

12:35-6.2 Complaint procedures: State service employees

(a) Any State employee who believes he or she has been adversely affected by a violation of N.J.A.C. 12:35-6.1, or his or her duly authorized union representative, may file a complaint with the Governor's Office of Employee Relations.

1. The complaint shall be filed and reviewed pursuant to the State contract under which the complainant is covered.

2. The complaint shall be filed within 30 days of either the Work First/ FSETP participant's placement or use at the workplace, or the date on which complainant should reasonably have known of his or her placement or use or 30 days of when the alleged violation of N.J.A.C. 12:35-6.1 occurred.

3. A copy of the complaint shall be forwarded to the Division of Family Development within the Department of Human Services and to the Division of Employment and Training within the Department of Labor.

4. The Governor's Office of Employee Relations shall investigate and render a decision as to the appropriateness of the Work First/FSETP participant's placement or use at the worksite within 30 days of receipt of the complaint.

5. The complainant or his or her duly authorized union representative may appeal the decision of the Governor's Office of Employee Relations within 30 days of receipt of the decision pursuant to the State contract under which the complainant is covered.

6. The Governor's Office of Employee Relations shall set up an arbitration proceeding pursuant to the State contract under which the complainant is covered upon the receipt of the appeal.

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

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

12:35-6.3 Complaint procedures: Non-State service employees

(a) Any non-State employee who believes he or she has been adversely affected by a violation of N.J.A.C. 12:35-6.1, or his or her duly authorized union representative, may file a complaint with the Regional Manager, Division of Employment and Training within the Department of Labor.