

CHAPTER 55**WAGE PAYMENTS****Authority**

N.J.S.A. 34:1-20, 34:1A-3(e), and 34:11-4.1 and 24, as amended by P.L. 1991, c.205, and 34:11-4.4.

Source and Effective Date

R.1996 d.553, effective November 6, 1996.
See: 28 N.J.R. 4160(a), 28 N.J.R. 5075(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 55, Wage Payments, expires on May 5, 2002. See: 33 N.J.R. 3304(a).

Chapter Historical Note

Chapter 55, was originally adopted as N.J.A.C. 12:56-16, Payroll Deductions for Mass Transportation, by R.1990 d.215, effective April 16, 1990. See: 22 N.J.R. 148(a), 22 N.J.R. 1270(a). N.J.A.C. 12:56-16, Payroll Deductions for Mass Transportation, was recodified as Chapter 55, Wage Payments, by R.1990 d.520, effective November 5, 1990. See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b). A new rule was adopted at N.J.A.C. 12:55-1.4 by R.1991 d.447, effective August 19, 1991. See: 23 N.J.R. 1660(a), 23 N.J.R. 2512(a). Chapter 55, Wage Payments, was repealed and a new Chapter 55, Wage Payments, was adopted by R.1991 d.605, effective December 16, 1991. See: 23 N.J.R. 2939(a), 23 N.J.R. 3807(a).

Pursuant to Executive Order No. 66(1978), Chapter 55, Wage Payments, was readopted as R.1996 d.553, effective November 6, 1996. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 1. GENERAL PROVISIONS;
VIOLATIONS; FEES AND PENALTIES;
HEARINGS**

12:55-1.1 Purpose and scope

(a) The purpose of this chapter is to establish rules to effectuate N.J.S.A. 34:11-41 et seq., an act regarding the payment of wages.

(b) The chapter is applicable to:

1. Wages and hours subject to the Act;
2. Wages paid to an employee for services rendered; and
3. Time and mode of payment.

(c) This chapter shall not apply to:

1. Volunteers; or
2. Patients.

12:55-1.2 Definitions

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

“Act” means N.J.S.A. 34:11-4.1 et seq., an act regarding the payment of wages.

“Commissioner” means the Commissioner of Labor or his or her designee.

“Employee” means any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees.

“Employer” means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State. For the purposes of the Act and this chapter, the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.

“Mass transportation” means railroads operated by steam, electricity or other power, rapid transit lines and ferries, buses or other vehicles which possess a certificate of public convenience and necessity issued by the New Jersey Department of Transportation.

“Wages” means the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto.

Amended by R.1996 d.553, effective December 2, 1996.

See: 28 N.J.R. 4160(a), 28 N.J.R. 5075(b).

Amended by R.2000 d.197, effective May 15, 2000.

See: 31 N.J.R. 4220(a), 32 N.J.R. 1773(a).

In “Mass transportation”, inserted a reference to other vehicles.

12:55-1.3 Powers of the Commissioner

(a) The Commissioner shall enforce and administer the provisions of the Act and the Commissioner or his or her authorized representatives are empowered to investigate charges of violations of the Act.

(b) The Commissioner or his or her authorized representatives are empowered to enter and inspect such places, question such employees and investigate such facts, conditions or matters as they may deem appropriate to determine whether any person has violated any provision of the Act or this chapter or which may aid in the enforcement of the provisions of the Act or this chapter.

(c) The Commissioner or his or her authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the Commissioner.

(d) If a person fails to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of the Superior Court, on application by the Commissioner, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(e) The Commissioner is authorized to supervise the payment of amounts due to employees pursuant to Article 1 of chapter 11 of Title 34 of the Revised Statutes, and the employer may be required to make these payments to the Commissioner to be held in a special account in trust for the employees, 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 percent or more than 25 percent of any payment made to the Commissioner pursuant to this section. The amount of the administrative fee is specified in N.J.A.C. 12:55-1.5. The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

12:55-1.4 Violation; punishment

Any employer who knowingly and willfully violates any provision of P.L. 1965, c.173 (N.J.S.A. 34:11-4.1 et seq.) shall be guilty of a disorderly persons offense and, upon conviction for a violation, shall be punished by a fine of not less than \$100.00 nor more than \$1,000. Each day during which any violation of the Act continues shall constitute a separate and distinct offense.

12:55-1.5 Administrative fee

(a) The employer shall pay the Commissioner an administrative fee on all payments of gross amounts due employees pursuant to N.J.S.A. 34:11-4.1 et seq.

(b) A schedule of fees is as follows:

1. First violation—10 percent of the amount due the employee;
2. Second violation—18 percent of the amount due the employee;
3. Third and subsequent violations—25 percent of the amount due the employee.

(c) All payments shall be made payable to the Commissioner of Labor, Wage Payment Trust Fund by certified check or money order, or in the form suitable to the Commissioner of Labor.

12:55-1.6 Administrative penalty

(a) As an alternative or in addition to any other sanctions provided for in N.J.S.A. 34:11-4.1 et seq. when the Commissioner finds that an employer has violated the 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 violations—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 working days following the receipt of the notice.

1. The notice shall become the Final Order upon the expiration of the 15 working day period following receipt of the notice if a hearing is not requested.
2. If a hearing is requested the Commissioner shall issue a Final Order upon such hearing and a finding that the violation has occurred.

3. All fees and penalties shall be paid within 30 days of the Final Order. Failure to pay such fees and/or penalty shall result in a Judgment being obtained in a court of competent jurisdiction.

4. All payments shall be payable to the Commissioner of Labor, Wage Payment Trust Fund in the form of a certified check or money order, or such other form suitable to the Commissioner of Labor.