

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.2001 d.430, effective October 25, 2001.
See: 33 N.J.R. 3304(a), 33 N.J.R. 3898(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 55, Wage Payments, expires on April 23, 2007. See: 38 N.J.R. 4980(a).

Chapter Historical Note

Chapter 55, was 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).

Chapter 55, Wage Payments, was repealed and a new Chapter 55, Wage Payments, was adopted by R.1991 d.605, effective December 16, 1991.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: 28 N.J.R. 4160(a), 28 N.J.R. 5075(b).

Chapter 55, Wage Payments, was readopted as R.2001 d.430, effective October 25, 2001. See: Source and Effective Date.

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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.

(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 violations;
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.

12:55-1.7 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.

New Rule, R.2001 d.278, effective August 6, 2001.

See: 33 N.J.R. 1850(a), 33 N.J.R. 2676(a).

Former N.J.A.C. 12:55-1.7, Hearings, recodified to N.J.A.C. 12:55-1.8.

12:55-1.8 Hearings

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:55-1.6, 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 working 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 Procedure Rules, N.J.A.C. 1:1.

(c) The Commissioner shall make the final decision of the Department.

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

(e) Recipients of an administrative penalty assessment may request the initiation of a settlement conference at the time that a hearing request is made.

(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.

Recodified from N.J.A.C. 12:55-1.7 by R.2001 d.278, effective August 6, 2001.

See: 33 N.J.R. 1850(a), 33 N.J.R. 2676(a).

SUBCHAPTER 2. PAYROLL DEDUCTIONS

12:55-2.1 Payroll deductions; general

(a) No employer may withhold or divert any portion of any portion of an employee's wages unless:

1. The employer is required or empowered to do so by New Jersey or United States law; or
2. The amounts withheld or diverted are for:
 - i. Contributions authorized either in writing by employees, or under a collective bargaining agreement, to employee welfare, insurance, hospitalization, medical or surgical or both, pension, retirement, and profit-sharing plans, and to plans establishing individual retirement annuities on a group or individual basis, as defined by section 408(b) of the Federal Internal Revenue Code of 1954 as amended (26 U.S.C. 408(b)), or individual retirement accounts at any State or Federally chartered bank, savings bank, or savings and loan association, as defined by section 408(a) of the Federal Internal Revenue Code of 1954, as amended (26 U.S.C. 408(a)), for the employee, his or her spouse or both.
 - ii. Contributions authorized either in writing by employees, or under a collective bargaining agreement, for payment into company-operated thrift plans; or securi-

ty option or security purchase plans to buy securities of the employing corporation, an affiliated corporation, or other corporations at market price or less, provided such securities are listed on a stock exchange or are marketable over the counter.

iii. Payments authorized by employees for payment into employee personal savings accounts, such as payments to a credit union, savings fund society, savings and loan or building and loan association; and payments to banks for Christmas, vacation, or other savings funds; provided all such deductions are approved by the employer.

iv. Payments for company products purchased in accordance with a periodic payment schedule contained in the original purchase agreement; payments for employer loans to employees, in accordance with a periodic payment schedule contained in the original loan agreement; payments for safety equipment; payments for the purchase of United States Government bonds; and payments to correct payroll errors; provided all such deductions are approved by the employer.

v. Contributions authorized by employees for organized and generally recognized charities; provided the deductions for such contributions are approved by the employer.

vi. Payments authorized by employees or their collective bargaining agents for the rental of work clothing or uniforms or for the laundering or dry cleaning of work clothing or uniforms; provided to the employee at his or her discretion by an outside vendor or the employer and, provided the deductions for such payments are approved by the employer.

vii. Labor organization dues and initiation fees, and such other labor organization charges permitted by law.

viii. Such other contributions, deductions and payment as the Commissioner of Labor may authorize by regulation as proper and in conformity with the intent and purpose of the Act, if such deductions are approved by the employer.

Amended by R.1996 d.553, effective December 2, 1996.
See: 28 N.J.R. 4160(a), 28 N.J.R. 5075(b).

12:55-2.2 Payroll deductions for mass transportation commuter tickets

(a) Each employer may use a payroll deduction as a means of providing mass transportation commuter tickets only if the payroll deduction has been authorized by the employee in writing or in a collective bargaining agreement.

(b) Each employer that uses a payroll deduction as set forth in (a) above shall make this method of payment for mass transportation commuter tickets available to all of its employees.

(c) When an employer provides transportation to a work site, the employer may deduct the actual cost, exclusive of profit to the employer, of such transportation, provided such deduction is in accordance with (a) above.

Amended by R.2000 d.197, effective May 15, 2000.
See: 31 N.J.R. 4220(a), 32 N.J.R. 1773(a).
Added (c).

12:55-2.3 Voluntary wage deduction for repayment of financial obligations to the State of New Jersey

(a) Each employer may institute a system whereunder a portion of an employee's salary is withheld as an installment payment against any financial obligation by that employee to the State of New Jersey.

(b) Any employer who institutes such a repayment plan pursuant to (a) above shall withhold on a periodic basis from an employee's salary only such an amount as that employee shall have expressly authorized in writing.

(c) Any employer who withholds any sum from an employee's salary for repayment of a financial obligation by the employee to the State shall forthwith pay the amount of such withheld salary to the appropriate State officer or agent to whom such obligation is made payable.

(d) Nothing in this section shall be construed as mandating participation by an employer or employee in such an installment repayment program.

12:55-2.4 Time and mode of payment

(a) All final payment of wages following the termination or voluntary leaving of employment shall be completed within 10 days from the end of the work period for which such wages are earned, in compliance with N.J.S.A. 34:11-4.2.

(b) When any employee is suspended as a result of a labor dispute and such labor dispute involves those employees who make up payrolls, the employer may have an additional 10 days in which to pay such wages.

(c) The employer shall:

1. Pay the employee on the regular scheduled pay date; or
2. Mail such payment of wages to the last known address of the employee.

(d) Payment of wages shall be in lawful money of the United States or with checks drawn on banking institutions where suitable arrangements are made for the cashing of such checks by employees without difficulty and for the full amount for which they are drawn.

(e) When a fee is charged for the cashing of a payroll check at the banking institution on which the check is drawn, the employer shall bear the burden of the fee.

(f) Where suitable arrangements are not made for the cashing of payroll checks as set forth in (d) above, the employer shall bear the burden of any fee charged to the employee for the cashing of such payroll check.

New Rule, R.1996 d.553, effective December 2, 1996.
See: 28 N.J.R. 4160(a), 28 N.J.R. 5075(b).
Amended by R.1997 d.467, effective November 3, 1997.
See: 29 N.J.R. 3701(a), 29 N.J.R. 4702(a).
Added (d) through (f).

12:55-2.5 Withholding of income tax for foreign jurisdictions

(a) For purposes of this section, a foreign jurisdiction means a sister state or any municipality or other subdivision of a sister state which imposes a tax on the income or wages of nonresidents employed in New Jersey.

(b) Each New Jersey employer who employs nonresidents may, for each pay period, deduct and withhold an amount, computed in accordance with (d) below, from the salary or wages of an employee whose salary or wages are subject to the income or wage tax of a foreign jurisdiction, for the purpose of crediting such amount on account of the income or wage tax due or to become due from the employee to the foreign jurisdiction.

(c) An employer shall not deduct and withhold an employee's salary or wages under (b) above unless it has

obtained the expressed written authorization of the employee.

(d) The amount of the employee's salary or wages deducted and withheld shall be computed in such a manner as to result in withholding from the employee's salary or wages, during each calendar year, an amount substantially equivalent to the tax reasonably estimated to be or become due from such employee to the foreign jurisdiction as taxes upon his or her salary or wages received from the employer during the calendar year.

(e) The employer shall hold the amounts deducted and withheld in a trust fund for payment to the foreign jurisdiction.

(f) The employer shall furnish to the foreign jurisdiction a statement of the name, place of residence, amount of salary or wages earned by, and amount of salary or wages so deducted or withheld from the employee.

(g) Nothing in this section shall eliminate, reduce or replace an employer's wage reporting and recordkeeping requirements under N.J.S.A. 34:11-1 et seq. and N.J.A.C. 12:56-4.1, or an employer's gross income tax withholding requirements under N.J.S.A. 54A:7-1 et seq. and N.J.A.C. 18:35-1.10 for an employee who authorizes the employer to withhold the income or wage tax of a foreign jurisdiction.

New Rule, R.1998 d.404, effective August 3, 1998.
See: 30 N.J.R. 1892(a), 30 N.J.R. 2928(a).