

**CHAPTER 56
WAGE AND HOUR**

Authority

N.J.S.A. 34:1-20; 34:1A-3(e); 34:2-21.64; and 34:11-56a et seq., specifically, 34:11-56a5 and 34:11-56a19.

Source and Effective Date

R.2006 d.88, effective January 26, 2006.
See: 37 N.J.R. 4170(a), 38 N.J.R. 1190(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 56, Wage and Hour, expires on July 25, 2013. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 56, New Jersey State Wage and Hour Law, was adopted and became effective prior to September 1, 1969.

Chapter 56, New Jersey State Wage and Hour Law, was repealed and Chapter 56, Wage and Hour, was adopted as new rules by R.1980 d.430, effective November 1, 1980. See: 12 N.J.R. 484(e), 12 N.J.R. 666(c).

Pursuant to Executive Order No. 66(1978), Chapter 56, Wage and Hour, was readopted as R.1985 d.524, effective September 26, 1985. See: 17 N.J.R. 2008(a), 17 N.J.R. 2561(b).

Pursuant to Executive Order No. 66(1978), Chapter 56, Wage and Hour, was readopted as R.1990 d.520, effective September 26, 1990, and N.J.A.C. 12:56-14.10 was recodified as Subchapter 17, Uniforms, and Subchapter 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).

Subchapter 10, Employment of Learners, Apprentices and Students, was repealed and Subchapter 10, Employment of Learners; Sub-Minimum Wage, was adopted as new rules by R.1992 d.328, effective August 17, 1992. See: 24 N.J.R. 2129(b), 24 N.J.R. 2924(a).

Pursuant to Executive Order No. 66(1978), Chapter 56, Wage and Hour, was readopted as R.1995 d.553, effective September 22, 1995, and Subchapter 10, Employment of Learners; Sub-Minimum Wage, was repealed and Subchapter 18, School-to-Work Program, was adopted as new rules by R.1995 d.553, effective October 16, 1995. See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

Subchapter 19, Employment in the Trucking Industry, was adopted as R.1996 d.375, effective August 5, 1996. See: 28 N.J.R. 1475(a), 28 N.J.R. 3798(c).

Subchapter 20, Employment of Skilled Mechanics, was adopted as R.1996 d.376, effective August 5, 1996. See: 28 N.J.R. 1476(a), 28 N.J.R. 3800(a).

Pursuant to Executive Order No. 66(1978), Chapter 56, Wage and Hour, was readopted as R.2000 d.423, effective September 22, 2000. See: 32 N.J.R. 2643(a), 32 N.J.R. 3855(a).

Chapter 56, Wage and Hour, was readopted as R.2006 d.88, effective January 26, 2006. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 56, Wage and Hour, was scheduled to expire on July 25, 2011. See: 43 N.J.R. 553(a).

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APPENDIX A. AVAILABILITY OF STANDARDS REFERRED TO IN THIS CHAPTER

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 non-compliance, 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.

New Rule, R.1990 d.520, effective November 5, 1990.

See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b).

Repealed existing 12:56-1.1, Title and citation, 12:56-1.2, Purpose, 12:56-1.3, Scope, and 12:56-1.4, Validity.

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

(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.

Amended by R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

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.

SUBCHAPTER 5. HOURS WORKED

12:56-5.1 Payment

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

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.

Amended by R.1990 d.520, effective November 5, 1990.
See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b).
Stylistic revisions.

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.

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.

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.

Amended by R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

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.

Amended by R.1990 d.520, effective November 5, 1990.
See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b).

Clarified text to specify "on-call time" and when hours are considered hours worked.
Administrative Correction to (a).
See: 23 N.J.R. 1416(c).

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.

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.

New Rule, R.2010 d.297, effective December 20, 2010.
See: 42 N.J.R. 1308(a), 42 N.J.R. 3061(b).

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 as provided in N.J.A.C. 12:56-7.6, every employer shall pay to each of his or her employees, wages at a rate of not less than 1 ½ times such employee’s regular hourly wage.

Amended by R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).
Administrative correction.
See: 30 N.J.R. 372(a).

Cross References

Exemption of automobile mechanics. See, N.J.A.C. 12:56-20.3.

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.

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.

12:56-6.4 Workweek hours

(a) Covered employees shall be paid 1½ 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.

Amended by R.1995 d.553, effective October 16, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

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”.

Amended by R.1990 d.520, effective November 5, 1990.
See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b).

Case Notes

Application of regular hourly wage formula to taxi driver’s situation places them on the same level as other piece-rate basis employees.

Yellow Cab Co. of Camden v. State, 126 N.J.Super. 81, 312 A.2d 870 (App.Div.1973), certification denied 64 N.J. 498, 317 A.2d 711 (1974).

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.

Amended by R.1990 d.520, effective November 5, 1990.
See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b).
Stylistic revisions.

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.

Case Notes

Limousine drivers were not entitled to overtime wages where overtime payments were offset against gratuities paid to drivers. *Charte v. A-1 Limousine, Inc.*, 96 N.J.A.R.2d (LBR) 76.

SUBCHAPTER 7. EXEMPTIONS FROM OVERTIME

12:56-7.1 Definition of executive

(a) "Executive" means any employee:

1. Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and

2. Who customarily and regularly directs the work of two or more other employees therein; and

3. Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the

hiring and firing and as to the advancement and promotion of any other change of status of other employees will be given particular weight; and

4. Who customarily and regularly exercises discretionary powers; and

5. Who devotes less than 20 percent of his or her workweek to non-exempt work or less than 40 percent if employed by a retail or service establishment, provided that in either case he or she retains his or her role as manager and supervises two or more full time employees; and

6. Who is compensated for his or her services on a salary basis exclusive of gratuities, board, lodging or other facilities, at a rate of not less than \$300.00 per week effective November 5, 1990, \$350.00 per week effective April 1, 1991, and \$400.00 per week effective April 1, 1992.

(b) "Executive" shall also include employees owning a bona fide equity in the enterprise of 20 percent or more.

(c) "Executive" shall not include employees training to become executives and not actually performing the duties of an executive.

Emergency Amendment, R.1980 d.506, effective November 20, 1980.
See: 13 N.J.R. 37(a).

(a)6: \$250.00 was \$350.00; November 20 was November 1.
Amended by R.1990 d.520, effective November 5, 1990.
See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b).

In (a)5: revised text to specify definition of executive employee; added text with supervision responsibilities.

In (a)6: revised dates and amounts of salary rates.

Petition for Rulemaking: repeal (a)6.

See: 24 N.J.R. 1827(a), 24 N.J.R. 2471(a).

12:56-7.2 Definition of administrative

(a) "Administrative" means any employee:

1. Whose primary duty consists of the performance of office or non-manual work directly related to management policies or general internal business operations; and

2. Who customarily and regularly exercises discretion and independent judgment; and

3. Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity; or who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or who executes under only general supervision special assignments and tasks; and

4. Who devotes less than 20 percent of his or her work to nonexempt work or less than 40 percent if employed by a retail or service establishment; and

5. Who is compensated for his or her services on a salary or fee basis, exclusive of gratuities, board, lodging or other facilities at a rate of not less than \$300.00 per

week effective November 5, 1990, \$350.00 per week effective April 1, 1991 and \$400.00 per week effective April 1, 1992.

(b) "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 \$300.00 per week effective November 5, 1990, \$350.00 per week effective April 1, 1991 and \$400.00 per week effective April 1, 1992.

Amended by R.1982 d.468, effective January 3, 1983.

See: 14 N.J.R. 1145(a), 15 N.J.R. 36(a).

Amended by R.1990 d.520, effective November 5, 1990.

See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b).

In (a)5 and (b): revised and updated amounts and dates in text.

Amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-7.3 Definition of professional

(a) "Professional" means any employee:

1. Whose primary duty consists of the performance of work:

i. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

ii. Which is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the employee; or

iii. Which requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field, as provided in 29 C.F.R. 541.303; and

2. Whose work requires the consistent exercise of discretion and judgment in its performance; and

3. Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized to a given period of time; and

4. Who devotes less than 20 percent of his or her workweek to nonexempt work; and

5. Who is compensated for his or her services on a salary or fee basis, exclusive of gratuities, board, lodging or other facilities at a rate of not less than \$300.00 per week effective November 5, 1990, \$350.00 per week effective April 1, 1991 and \$400.00 per week effective April 1, 1992.

Amended by R.1990 d.520, effective November 5, 1990.

See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b).

In (a)5: revised amounts and both current and future dates.

Amended by R.1998 d.548, effective November 16, 1998.

See: 30 N.J.R. 3153(a), 30 N.J.R. 4053(a).

In (a)1, added iii.

Case Notes

Former N.J.A.C. 12:56-4.3, read in pari materia with N.J.A.C. 13:36, supports defendant-employer's claim of good faith reliance on an interpretation of the Wage and Hour Law that morticians were professional. *State v. Frech Funeral Home*, 185 N.J.Super. 385, 448 A.2d 1037 (Law Div.1982).

12:56-7.4 Definition of outside sales person

(a) "Outside sales person" means any employee:

1. Who is employed for the purpose of and who is customarily and regularly engaged away from his or her employer's place or places of business in:

i. Making sales; or

ii. Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

2. Whose hours of work of a nature other than that described in (a)1 above do not exceed 20 percent of hours worked in the workweek; provided, that work performed incidental to and in conjunction with the outside sales person's own personal sales or solicitations, including incidental deliveries and collection, shall be regarded as exempt work. Employees who basically drive vehicles and who only incidentally or occasionally make sales shall not qualify for this exemption.

Amended by R.1990 d.520, effective November 5, 1990.

See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b).

Stylistic revisions.

Amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

Case Notes

Taxi drivers are not outside salesmen, nor is a taxicab company a "common carrier by motor bus" so as to be exempt from the Wage and Hour Law. *Yellow Cab Co. of Camden v. State*, 126 N.J.Super. 81, 312 A.2d 870 (App.Div.1973), certification denied 64 N.J. 498, 317 A.2d 711 (1974).

12:56-7.5 Outside service employees

Employees who are dispatched to perform a service and solicit performance of an additional service shall not qualify for this exemption.

New Rule, R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

12:56-7.6 Employees exempt from overtime

(a) Employees in a bonafide executive, administrative or professional capacity and outside sales persons shall be exempt from the overtime requirements of N.J.A.C. 12:56-6.1, with the exception of (b) below.

(b) Those employees who qualify as professionals under N.J.A.C. 12:56-7.3(a)1iii, who are also compensated on an hourly basis, must be compensated at a rate of not less than \$27.63 an hour in order to be exempt from the overtime requirements of N.J.A.C. 12:56-6.1.

Recodified from 12:56-7.5 and amended by R.1995 d.553, effective October 16, 1995.

See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

Amended by R.1998 d.548, effective November 16, 1998.

See: 30 N.J.R. 3153(a), 30 N.J.R. 4053(a).

Recodified the former section as (a); and added (b).

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.