

CHAPTER 65
CONSTRUCTION INDUSTRY INDEPENDENT
CONTRACTOR ACT RULES

Authority

N.J.S.A. 34:20-1 et seq., specifically 34:20-11.

Source and Effective Date

R.2008 d.293, effective October 6, 2008.
See: 40 N.J.R. 2197(a), 40 N.J.R. 5812(b).

Chapter Expiration Date

Chapter 65, Construction Industry Independent Contractor Act Rules, expires on October 6, 2013.

Chapter Historical Note

Chapter 65, Construction Industry Independent Contractor Act Rules, was adopted as new rules by R.2008 d.293, effective October 6, 2008. See: Source and Effective Date.

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SUBCHAPTER 1. STOP-WORK ORDERS

12:65-1.1 Purpose

The purpose of this subchapter is to set forth both the standard and procedure for the issuance by the Commissioner of a stop-work order and the release of same under N.J.S.A. 34:20-7c through 7f.

12:65-1.2 Scope

The provisions of this subchapter shall apply to each “employer” as that term is defined in N.J.A.C. 12:65-1.3.

12:65-1.3 Definitions

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

“Act” means N.J.S.A. 34:20-1 et seq., the Construction Industry Independent Contractor Act.

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

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

“Employer” means an individual, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who is primarily engaged in the business of, or enters into a contract for, making improvements to real property and includes any subcontractor or lower tier contractor.

“Employment relationship” or “employment” means “employment” as that term is defined within N.J.S.A. 34:20-4 (commonly referred to as “the ABC Test”).

“Final order” means either a final administrative determination of the Commissioner issued following adjudication of a matter as a contested case 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, or where the Department has made a finding regarding a violation of law or rule and/or regarding the levying of a penalty pursuant to law or rule, has notified the violator of same and where the violator has either expressly waived the right to a hearing or has waived the right to a hearing by virtue of having failed to request same within the appropriate time limit established by either law or rule.

“Properly classify” means that with regard to an individual with whom an employer has an employment relationship the employer keeps records, pays wages, benefits, taxes and other contributions required by an employer relative to those with whom the employer has an employment relationship under N.J.S.A. 34:11-56.25 et seq. (the New Jersey Prevailing Wage Act), N.J.S.A. 43:21-1 et seq. (the Unemployment Compensation Law), N.J.S.A. 43:21-25 et seq. (the Temporary Disability Benefits Law), N.J.S.A. 54A:1-1 et seq. (the New Jersey Gross Income Tax Act), and N.J.S.A. 34:11-4.1 et seq. (New Jersey Wage Payment law), or N.J.S.A. 34:11-56a et seq. (the New Jersey Wage and Hour Law).

“Violation of the provisions of the Act” means that a final order(s) has been issued by the Commissioner indicating that the employer has failed to properly classify an individual and, with regard to that individual, that the employer has failed to pay wages, benefits, taxes or other contributions required by N.J.S.A. 34:11-56.25 et seq. (the New Jersey Prevailing Wage Act), N.J.S.A. 43:21-1 et seq. (the Unemployment Compensation Law), N.J.S.A. 43:21-25 et seq. (the Temporary Disability Benefits Law), N.J.S.A. 54A:1-1 et seq. (the New Jersey Gross Income Tax Act), and N.J.S.A. 34:11-4.1 et seq. (New Jersey Wage Payment law), or N.J.S.A. 34:11-56a et seq. (the New Jersey Wage and Hour Law).

12:65-1.4 Stop-work order—second violation of the provisions of the Act

(a) For a second violation of the provisions of the Act, the Commissioner shall, within 72 hours of the violation of the

provisions of the Act, issue a stop-work order requiring the cessation of all business operations of the violator at every site at which the violation of the provisions of the Act occurred.

(b) The stop-work order under (a) above shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite.

(c) The stop-work order under (a) above shall remain in effect until the Commissioner issues an order releasing the stop-work order under N.J.A.C. 12:65-1.6.

12:65-1.5 Stop-work order—third violation or subsequent violations of the provisions of the Act

(a) For a third or subsequent violation of the provisions of the Act, the Commissioner shall, within 72 hours of the violation of the provisions of the Act, issue a stop-work order requiring the cessation of all business operations of the violator.

(b) The stop-work order in (a) above shall take effect when served upon the employer.

(c) The stop-work order in (a) above shall remain in effect until the Commissioner issues an order releasing the stop-work order under N.J.A.C. 12:65-1.6.

12:65-1.6 Release of stop-work order

(a) The Commissioner shall issue an order releasing the stop-work order upon a showing by the employer against

whom the stop-work order has been issued under either N.J.A.C. 12:65-1.4 or 1.5 that:

1. The employer against whom the stop-work order has been issued is properly classifying the individual(s); and
2. The employer against whom the stop-work order has been issued has paid any penalty assessed against it by the Department under the Act.

(b) As a condition of release of a stop-work order under this section, the Commissioner may require the employer against whom the stop-work order had been issued to file with the Department periodic reports, the requirements of which are set forth in N.J.A.C. 12:65-1.7, for a probationary period of two years.

12:65-1.7 Periodic reports—requirements

(a) Where the Commissioner has conditioned the release of a stop-work order upon the filing of periodic reports for a two-year probationary period under N.J.A.C. 12:65-1.6(b), the periodic report shall consist of the following, which shall be filed by the employer with the Division of Wage and Hour Compliance, within the Department, on a quarterly basis pursuant to the schedule set forth at N.J.A.C. 12:16-5.2(a):

1. A copy of the payroll records required to be kept by each employer under N.J.A.C. 12:16-2.1.