

condition of such judgment of conviction, to offer reinstatement in employment to any such discharged employee and to correct any such discriminatory action, and also to pay to any such employee in full, all wages lost as a result of such discharge or discriminatory action, under penalty of contempt proceedings for failure to comply with such requirement.

(b) As an alternative to, or in addition to, any sanctions imposed under (a) above, the Commissioner is authorized under N.J.S.A. 34:11-56a24 to assess and collect administrative penalties as provided for in N.J.A.C. 12:56-1.3.

New Rule, R.1991 d.606, effective December 16, 1991.
See: 23 N.J.R. 2942(a), 23 N.J.R. 3810(a).
Recodified from N.J.A.C. 12:56-1.6 by R.2001 d.278, effective August 6, 2001.
See: 33 N.J.R. 1850(a), 33 N.J.R. 2676(a).

SUBCHAPTER 2. DEFINITIONS

12:56-2.1 Definitions

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

“Act” means the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a et seq.

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

“Covered employee” means an employee subject to this chapter.

“Division of Wage and Hour Compliance” means Division of Wage and Hour Compliance of Labor Standards and Safety Enforcement of the New Jersey State Department of Labor and Workforce Development, PO Box 389, Trenton, N.J. 08625-0389.

“Employ” means to suffer or permit to work.

“Employee” includes any individual employed by an employer, except:

1. For trainees who are involved in a program in which:
 - i. The training is for the primary benefit of the trainee;
 - ii. The employment for which the trainee is training requires some cognizable trainable skill;
 - iii. The training is not specific to the employer, that is, is not exclusive to its needs, but may be applicable elsewhere for another employer or in another field of endeavor;
 - iv. The training, even though it includes actual operation of the facilities of the employer, is similar to that which may be given in a vocational school;

v. The trainee does not displace a regular employee on a regular job or supplement a regular job, but trains under close tutorial observation;

vi. The employer derives no immediate benefit from the efforts of the trainee and, indeed, on occasion may find his or her regular operation impeded by the trainee;

vii. The trainee is not necessarily entitled to a job at the completion of training;

viii. The training program is sponsored by the employer, is outside regular work hours, the employee does no productive work while attending and the program is not directly related to the employee’s present job (as distinguished from learning another job or additional skill); and

ix. The employer and the trainee share a basic understanding that regular employment wages are not due for the time spent in training, provided that the trainee does not perform any productive work.

2. If a trainee does not meet all of the above-listed criteria, the trainee shall be considered to be an employee.

“Employer” includes any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

“Fair wage” means a wage fairly and reasonably commensurate with the value of the service or class of service rendered and sufficient to meet the minimum cost of living necessary for health.

“N.J.A.C.” means the New Jersey Administrative Code.

“N.J.S.A.” means the New Jersey Statutes Annotated.

“Occupation” means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

“Oppressive and unreasonable wage” means a wage which is both less than the fair and reasonable value of the service rendered and less than sufficient to meet the minimum cost of living necessary for health.

“Patient” means a person, such as an alcoholic or drug addict receiving inconsequential payments in a program administered by an organized and generally recognized charity.

“Premium pay” means a sum of money or bonus paid in addition to the regular price, salary or other amount.

“Regular hourly wage” means the amount that an employee is regularly paid for each hour of work as determined by dividing total hours of work during the week into the

employee's total earnings for the week, exclusive of overtime premium pay.

"Volunteer" means a person who donates his or her service for the protection of the health and safety of the general public. Such a person would include, among others, a volunteer fireman, rescue worker, an aide in the care of the sick, aged, young, mentally ill, destitute and the like or assistant in religious, eleemosynary, educational, hospital, cultural and similar activities.

"Wages" means any monies due an employee from an employer for services rendered or made available by the employee to the employer as a result of their employment relationship including commissions, bonus and piecework compensation and including any gratuities received by an employer to an employee.

"Work hours" means the actual hours suffered or permitted to work.

Amended by R.1989 d.304, effective June 5, 1989.

See: 21 N.J.R. 692(a), 21 N.J.R. 1578(a).

Exceptions related to trainee status added to the definition of employee.

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

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

Deleted various definitions already defined in N.J.A.C. 12:56.

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

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

Added definition of "work hours".

Amended by R.2000 d.423, effective October 16, 2000.

See: 32 N.J.R. 2643(a), 32 N.J.R. 3855(a).

Inserted "Division of Wage and Hour Compliance"; and deleted "Office of Wage and Hour Compliance".

Amended by R.2006 d.88, effective February 21, 2006.

See: 37 N.J.R. 4170(a), 38 N.J.R. 1190(a).

Added "and Workforce Development" to definitions "Commissioner" and "Division of Wage and Hour Compliance."

SUBCHAPTER 3. MINIMUM WAGE RATES

12:56-3.1 Statutory minimum wage rates for specific years

Except as provided in N.J.A.C. 12:56-3.2, employees shall be paid not less than the minimum hourly wage rate set by section 6(a)(1) of the Federal "Fair Labor Standards Act of 1938" (29 U.S.C. §206(a)(1)) or the rate provided under N.J.S.A. 34:11-56a4, whichever is greater.

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)1-3, increased minimum wage for newly adjusted current and future years.

Amended by R.2000 d.423, effective October 16, 2000.

See: 32 N.J.R. 2643(a), 32 N.J.R. 3855(a).

Rewrote the section.

Amended by R.2009 d.390, effective December 21, 2009.

See: 41 N.J.R. 3017(a), 41 N.J.R. 4820(a).

Deleted designation (a), inserted "not less than", and substituted "§206(a)(1)) or the rate provided under N.J.S.A. 34:11-56a4, whichever is greater" for "§ 206(a)(1)".

12:56-3.2 Exemptions from the statutory minimum wage rates

(a) Employees in the following occupations shall be exempt from the statutory minimum wage rates:

1. Full-time students employed by the college or university at which they are enrolled at not less than 85 percent of the effective minimum wage rate, effective March 1, 1979;
2. Outside sales person;
3. Sales person of motor vehicles;
4. Part time employees primarily engaged in the care and tending of children in the home of the employer;
5. Minors under 18 years of age except as provided in N.J.A.C. 12:56-11, 12:56-13, 12:56-14 and N.J.A.C. 12:57, Wage Orders for Minors; and
6. At summer camps, conferences and retreats operated by any nonprofit or religious corporation or association during the months of June, July, August and September.

Administrative Correction to (a)5.

See: 15 N.J.R. 43(b).

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

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

SUBCHAPTER 4. RECORDS

12:56-4.1 Contents

Every employer shall keep records which contain the name and address of each employee, the birth date if under the age of 18, the total hours worked each day and each workweek, earnings, including the regular hourly wage, gross to net amounts with itemized deductions, and the basis on which wages are paid.

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.2000 d.423, effective October 16, 2000.

See: 32 N.J.R. 2643(a), 32 N.J.R. 3855(a).

Inserted "total" preceding "hours worked each day".

12:56-4.2 Time keeping system

The employer may use any system of time keeping containing the items specified in N.J.A.C. 12:56-4.1, provided it is a complete, true and accurate record.

12:56-4.3 Fixed working schedule

(a) Many employees, particularly in offices, are on a fixed working schedule from which they seldom vary. In these instances, the employer may keep a record showing the exact schedule of daily and weekly work hours that the employee is expected to follow and merely indicate each workweek that the schedule was followed.

(b) When the employee works longer or shorter hours than the schedule indicates, the employer shall record the hours the employee actually worked.

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

12:56-4.4 Retention period

Records containing the information required by this subchapter shall be kept for six years.

12:56-4.5 Location; inspection

(a) Records shall be kept at the place of employment or in a central office in New Jersey, except as provided in (b) below.

(b) In unusual circumstances where it is not feasible to keep records in New Jersey, exception from this provision may be obtained from the Commissioner.

(c) All records shall be open to inspection by the Commissioner at any reasonable time.

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.

In (c): deleted text referring to the "assistant director or his authorized representative," indicating only the Commissioner.

12:56-4.6 Employer gratuity records

Supplementary to the provisions of any section of this chapter pertaining to the records to be kept with respect to employee, every employer of employees who receive gratuities shall also maintain and preserve payroll or other records

containing the total gratuities received by each employee during the payroll week.

12:56-4.7 Employee gratuity reports

(a) Employees receiving gratuities shall report them either daily or weekly as required by the employer. The information in the report shall include:

1. The employee's name, address and social security number;
2. The name and address of the employer;
3. The calendar day or week covered by the report; and
4. The total amount of gratuities received.

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

12:56-4.8 Acceptable gratuity report form

The United States Treasury Department, Internal Revenue Service, "Employee's Report on Tips" shall be acceptable in those instances where the report is made on a weekly basis or less.

12:56-4.9 Food or lodging records

(a) Supplementary to the provisions of any section of this chapter pertaining to the records to be kept with respect to employees, every employer, who claims credit for food or lodging as a cash substitute for employees who receive food or lodgings supplied by the employer, shall maintain and preserve records substantiating the cost of furnishing such food or lodgings.