

CHAPTER 57

WAGE ORDERS FOR MINORS

Authority

N.J.S.A. 34:1-20, 34:1A-3(e), 34:11-56a19 and 34:2-21.64.

Source and Effective Date

R.1990 d.521, effective September 26, 1990.
See: 22 N.J.R. 2240(a), 22 N.J.R. 3382(a).

Executive Order No. 66(1978) Expiration Date

Chapter 57, Wage Orders for Minors, expires on September 26, 1995.

Chapter Historical Note

Chapter 57, Wage Orders for Minors, was filed and became effective prior to September 1, 1969. Chapter 57 was repealed and replaced with new rules by R.1980 d.431, effective November 1, 1980. See: 12 N.J.R. 485(a), 12 N.J.R. 666(d). The Forward to Chapter 57 was repealed and sections were amended by R.1981 d.226, effective July 9, 1981. See: 13 N.J.R. 307(a), 13 N.J.R. 441(c). Pursuant to Executive Order No. 66(1978), Chapter 57 was readopted by R.1985 d.523, effective September 26, 1985. See: 17 N.J.R. 2009(a), 17 N.J.R. 2561(c). Pursuant to Executive Order No. 66, Chapter 57 was readopted by R.1990 d.521. See: Source and Effective Date. Subchapter 1, General Provisions, was recodified and N.J.A.C. 12:57-1.3 through 12:57-1.6 were reserved by R.1990 d.521.

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See section level annotations for specific rulemaking activity.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:57-1.1 Purpose; scope
- 12:57-1.2 Violations and penalties
- 12:57-1.3 through 12:57-1.6 (Reserved)

SUBCHAPTER 2. DEFINITIONS

- 12:57-2.1 Definitions

SUBCHAPTER 3. MERCANTILE OCCUPATIONS

- 12:57-3.1 Scope
- 12:57-3.2 Definitions
- 12:57-3.3 Minimum wage
- 12:57-3.4 Overtime rate
- 12:57-3.5 Regular hourly wage
- 12:57-3.6 Waiting time
- 12:57-3.7 Travel time
- 12:57-3.8 Piece work
- 12:57-3.9 Employment under existing minimum wage orders
- 12:57-3.10 Diversified employment
- 12:57-3.11 Handicapped
- 12:57-3.12 Records
- 12:57-3.13 Posting

SUBCHAPTER 4. BEAUTY CULTURE OCCUPATIONS

- 12:57-4.1 Scope
- 12:57-4.2 Definitions
- 12:57-4.3 Minimum wage

- 12:57-4.4 Overtime rate
- 12:57-4.5 Regular hourly wage
- 12:57-4.6 Waiting time
- 12:57-4.7 Gratuities
- 12:57-4.8 Furnishing equipment
- 12:57-4.9 Handicapped
- 12:57-4.10 Records
- 12:57-4.11 Posting

SUBCHAPTER 5. LAUNDRY, CLEANING AND DYEING OCCUPATIONS

- 12:57-5.1 Scope
- 12:57-5.2 Definitions
- 12:57-5.3 Minimum wage
- 12:57-5.4 Overtime rate
- 12:57-5.5 Regular hourly wage
- 12:57-5.6 Waiting time
- 12:57-5.7 Travel time
- 12:57-5.8 Piece work
- 12:57-5.9 Handicapped
- 12:57-5.10 Records
- 12:57-5.11 Posting

SUBCHAPTER 1. GENERAL PROVISIONS

Authority

N.J.S.A. 34:11-56a19.

12:57-1.1 Purpose; scope

(a) The purpose of this chapter is to define and clarify certain sections of N.J.S.A. 34:11-56a et seq.

(b) This chapter shall apply to the wage rates for the employment of minors subject to N.J.S.A. 34:11-34 et seq.

(c) This chapter shall apply to minors employed in mercantile occupations, beauty culture occupations, and laundry, cleaning and dyeing occupations.

(d) Other wage orders and regulations for minors under 18 years of age are provided for under N.J.A.C. 12:56-11, 13 and 14, Wage and Hour.

Amended by R.1990 d.521, effective November 5, 1990.

See: 22 N.J.R. 2240(a), 22 N.J.R. 3382(a).

Restructured N.J.A.C. 12:57-1.2, "Purpose" as subsection (a) under new "Purpose; scope" and N.J.A.C. 12:57-1.3, "Scope" as subsections (b)-(d).

Prior amendments for recodified sections are as follows:

For N.J.A.C. 12:57-1.2:

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

Revised N.J.S.A. cite to 34:11-56a et seq. from 34:11-34 et seq.

For N.J.A.C. 12:57-1.3:

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

(a): "34:11-56a et seq." was "34:11-34 et seq.".

(c) added.

12:57-1.2 Violations and penalties

(a) An employer or his agent, or the officer or agent of any corporation, is a disorderly person, if he or she discharges or in any other manner discriminates against any employee because the employee has served or is about to serve on a wage board or has testified or is about to testify before a wage board or in any other investigation or proceeding or because the employer believes that the employee may serve on a wage board or may testify before a wage board or in any investigation or proceeding under this chapter and shall be guilty of a disorderly person offense and upon conviction be punished by a fine of not more than \$500.00.

(b) An employer or the officer or agent of any corporation is a disorderly person if he or she pays or agrees to pay to any minor less than the rates applicable to such minor under a mandatory minimum fair wage order and shall be guilty of a disorderly person offense and upon conviction be punished by a fine of not more than \$500.00 or by imprisonment of not more than 90 days or by both such fine and imprisonment. Each week, in any day of which an employee is paid less than the rate applicable to him or her under a mandatory minimum fair wage order; and each employee so paid, shall constitute a separate offense.

(c) An employer or the officer or agent of any corporation is a disorderly person if he or she fails to keep the records required or to furnish such records to the Commissioner upon request and shall be guilty of a disorderly person offense and upon conviction be punished by a fine of not more than \$500.00 and each day of such failure to keep the records or to furnish same as required shall constitute a separate offense.

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

Amended to comply with N.J.S.A. 2C:43-3 et seq. regarding fine.

Amended by R.1990 d.521, effective November 5, 1990.

See: 22 N.J.R. 2240(a), 22 N.J.R. 3382(a).

Recodified from N.J.A.C. 10:57-1.6. Stylistic revisions.

12:57-1.3 (Reserved)

R.1990 d.521, effective November 5, 1990.

See: 22 N.J.R. 2240(a), 22 N.J.R. 3382(a).

Recodified to N.J.A.C. 10:57-1.1. Section was "Scope."

12:57-1.4 (Reserved)

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

Repealing rules concerning chapter effective date of November 1, 1980.

12:57-1.5 (Reserved)

Repealed by R.1990 d.521, effective November 5, 1990.

See: 22 N.J.R. 2240(a), 22 N.J.R. 3382(a).

Section was "Validity."

12:57-1.6 (Reserved)

R.1990 d.521, effective November 5, 1990.

See: 22 N.J.R. 2240(a), 22 N.J.R. 3382(a).

Recodified to N.J.A.C. 12:57-1.2, "Violations and Penalties."

SUBCHAPTER 2. DEFINITIONS**Authority**

N.J.S.A. 34:11-56a19.

12:57-2.1 Definitions

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

"Act" means 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 or his or her designee.

"Employee" means any individual employed by an employer.

"Employer" means 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.

"Minor" means any person under the age of 18 years.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Office of Wage and Hour Compliance" means Office of Wage and Hour Compliance of the Division of Workplace Standards of the New Jersey State Department of Labor, CN 389, Trenton, N.J. 08625.

Amended by R.1990 d.521, effective November 5, 1990.

See: 22 N.J.R. 2240(a), 22 N.J.R. 3382(a).

Deleted definitions with N.J.A.C. citations. Stylistic revisions.

SUBCHAPTER 3. MERCANTILE OCCUPATIONS**Authority**

N.J.S.A. 34:11-56a19.

12:57-3.1 Scope

This subchapter shall apply to the minimum wage rates paid to all minors engaged in mercantile occupations, irrespective of the nature of the business of the employer or the location of the place where the work is being performed.

Amended by R.1990 d.521, effective November 5, 1990.

See: 22 N.J.R. 2240(a), 22 N.J.R. 3382(a).

12:57-3.2 Definitions

(a) "Mercantile occupation" means:

1. Any employment in or for any industry or business selling or offering for sale any type of merchandise, wares, goods, articles or commodities.

2. All work connected with the soliciting of sales or opportunities for sale and the distributing of such merchandise, wares, goods, articles or commodities and the rendering of services incidental to the sale, use or upkeep of the same whether performed on the employer's premises or elsewhere; or

3. Work performed in the manufacturing of merchandise sold at retail upon the premises where it is manufactured; and

4. Does not mean work performed in the manufacturing of merchandise which is sold at wholesale by the manufacturer.

(b) "Working time" means time for which wages are paid and includes both time worked and time of authorized attendance, whether or not work is provided and time is spent in traveling, within the State of New Jersey, from one establishment to another which is authorized or requested by the employer.

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

(a)3: "and" added.

12:57-3.3 Minimum wage

Minors under 18 years of age at mercantile occupations shall be paid not less than the statutory minimum wage rate.

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

Deleted reference to "\$3.10 per hour ..." after "minimum wage rate". Inserted "statutory" before "minimum wage rate".

12:57-3.4 Overtime rate

(a) Overtime, at the rate of not less than one and one-half times the regular rate at which the employee is actually employed, shall be paid to each minor for hours worked in excess of 40 in any one week, except that the overtime rate shall not apply to an executive, professional or administrative employee who is paid for his or her services in accordance with N.J.A.C. 12:56-7.

1. N.J.A.C. 12:56-7 is available for review between the hours of 9:00 A.M. and 4:00 P.M. on normal working days at the New Jersey Department of Labor Division of Workplace Standards, John Fitch Plaza, Trenton, New Jersey.

2. A copy of N.J.A.C. 12:56-7 may be obtained without cost from the Office of Wage and Hour Compliance, New Jersey Department of Labor, CN 389, Trenton, New Jersey 08625.

Amended by R. 1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

Amended by R.1990 d.521, effective November 5, 1990.

See: 22 N.J.R. 2240(a), 22 N.J.R. 3382(a).

Added subsection (a) designation to text. Stylistic revisions.

12:57-3.5 Regular hourly wage

(a) "Regular hourly wage" means the amount that an employee is regularly paid for each hour of work as determined by dividing the total hours of work during the week into the employee's total earnings for the week, exclusive of overtime premium pay.

(b) The regular rate of pay at which the employee is employed shall not be less than the minimum rate established by N.J.A.C. 12:57-3.3.

(c) When an employee is paid on a piece work basis or any other basis than an hourly rate the regular hourly wage shall be determined by dividing the total of the hours worked during the week into the employee's total earnings exclusive of part time bonuses for the week and exclusive of wages earned at overtime rates as such rates are defined.

(d) The total computed earnings shall include commissions, bonuses and all compensation paid by the employer, except overtime pay.

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

(a) Delete old definition text and substitute new text therefor.

(b) Old cross-reference was to N.J.A.C. 12:57-3.4.

12:57-3.6 Waiting time

Time during regular working hours and at other periods when employees are required to wait on the premises and no work is provided by the employer shall be counted as working time and paid at such employee's regular hourly wage.

12:57-3.7 Travel time

An employee who is required or authorized to travel, from one establishment to another shall be compensated for the travel time at the same rate as for working time and shall be reimbursed for travel expense.

12:57-3.8 Piece work

(a) Minors employed on a piece work or commission basis shall be employed at rates which yield to each employee not less than the minimum wage established for time workers.

(b) For any week during which a minor is employed on a piece work or commission basis, or any basis whatsoever other than an hourly or time basis, the minimum amount of wage that shall be paid to such employee for such work shall be not less than the amount the employer would be required to pay if such employee were employed on an hourly or time basis.

(c) In the case of commissioned employees, their minimum wage may be charged against the commissions earned.

12:57-3.9 Employment under existing minimum wage orders

Whenever an employee is employed in any week solely in occupations governed by another minimum wage order, such employee may, for such week, be paid not less than the minimum rates required by such other minimum wage order.

12:57-3.10 Diversified employment

(a) "Diversified employment" means employment of an employee by one employer in mercantile occupations and during the same time being employed in occupations either covered or not covered by other minimum wage orders.

(b) An employee who during any payroll period works at diversified employment shall be paid for the full payroll period at the highest minimum wage rate established by any minimum wage order for any occupation in which the employee was engaged during the pay period in question; provided, however, that in cases where the employer has kept an accurate record of the actual time the employee has been engaged in each covered occupation, the employee may be paid not less than the minimum wage earned at such occupation.

12:57-3.11 Handicapped

No minor whose earning capacity has been impaired shall be paid at less than the minimum wage until a special license, in accordance with the provisions of N.J.S.A. 34:11-56a17(b) has been obtained by the employer from the Office of Wage and Hour Compliance.

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

N.J.S.A. "34:11-56a17(b)" was "34:11-48".

12:57-3.12 Records

(a) Every employer shall keep a record of the name and address of each such employee, together with a record of the ages of all minors, a true and accurate record of the amount paid each pay period to each minor, and such other records as are essential in determining an employee's regular hourly wage and the amount of overtime wages earned.

(b) Employers are required to keep a true and accurate record of the hours worked each day. These records shall include the actual starting and stopping time of each work period and the total hours worked each pay period by each minor.

12:57-3.13 Posting

A notice issued by the Office of Wage and Hour Compliance setting forth the provisions of this subchapter shall be posted in a conspicuous place in every room where minors are employed at mercantile occupations.

SUBCHAPTER 4. BEAUTY CULTURE OCCUPATIONS

Authority

N.J.S.A. 34:11-56a19.

12:57-4.1 Scope

This subchapter shall apply to the minimum wage rates paid to all minors engaged in beauty culture occupations, irrespective of the nature of the business of the employer or the location of the place where the work is being performed.

Amended by R.1990 d.521, effective November 5, 1990.

See: 22 N.J.R. 2240(a), 22 N.J.R. 3382(a).

12:57-4.2 Definitions

(a) "Beauty culture establishment" means any shop, store, place, room or part thereof, in which services are rendered in a beauty culture occupation, or any branch thereof, and a charge is made to the recipient of such services.

(b) "Beauty culture occupation" means any service, operation or process used or useful in the care, cleansing, or beautification of or in the enhancement of personal appearance, and all service, operation or process, incidental to such care, cleansing, beautification or enhancement, including the service of demonstrators, maids, cashiers, reception or appointment clerks.

(c) "Operator" means any employee duly licensed as an operator, manicurist, manager-operator or demonstrator by the New Jersey Board of Beauty Culture.

(d) "Senior student permit" means a permit issued by the New Jersey Board of Beauty Culture.

(e) "Temporary permit" means a permit issued by the New Jersey Board of Beauty Culture.

12:57-4.3 Minimum wage

Minors under 18 years of age at beauty culture occupations shall be paid not less than the statutory minimum wage rate.

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

Delete reference to "\$3.10 per hour ..." after "minimum wage rate".

12:57-4.4 Overtime rate

Overtime, at the rate of not less than one and one-half times the regular rate at which the employee is actually employed, shall be paid to each minor for hours worked in excess of 40 in any one week, except that the overtime rate shall not apply to an executive, professional or administrative employee who is paid for his services in accordance with N.J.A.C. 12:56-7.

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

(a)1 added.

Amended by R.1990 d.521, effective November 5, 1990.

See: 22 N.J.R. 2240(a), 22 N.J.R. 3382(a).

Deleted 1., N.J.S.A. reference.

12:57-4.5 Regular hourly wage

(a) "Regular hourly wage" means the amount that an employee is regularly paid for each hour of work as determined by dividing the total hours of work during the week into the employee's total earnings for the week, exclusive of overtime premium pay.

(b) The regular rate of pay at which the employee is employed shall not be less than the minimum rate established by N.J.A.C. 12:57-4.3.

(c) When an employee is paid on a piece work basis or any other basis than an hourly rate the regular hourly wage shall be determined by dividing the total of the hours worked during the week into the employee's total earnings exclusive of part time bonuses for the week and exclusive of wages earned at overtime rates as such rates are defined.

(d) The total computed earnings shall include commissions, bonuses and all compensation paid by the employer, except overtime pay.

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

(a): New definition text substituted for old text.

12:57-4.6 Waiting time

Any period of time during which an employee is required to wait on the premises and during which period no work is provided by the employer shall be counted as working time and be paid at such employee's regular hourly wage.

12:57-4.7 Gratuities

In no case shall tips or gratuities from patrons be counted as part of the minimum wage or regular wage rate being paid to an employee.

12:57-4.8 Furnishing equipment

Employers shall furnish all material and equipment pertinent to performance of the work with the exception of personal manicuring and hair cutting tools.

12:57-4.9 Handicapped

No minor whose earning capacity has been impaired by physical or mental deficiency or injury shall be paid at less than the minimum wage, unless a special license, in accordance with the provisions of N.J.S.A. 34:11-56a17(b), has been obtained by the employer from the Office of Wage and Hour Compliance.

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

"34:11-56a17(b)" was "34:11-48".

12:57-4.10 Records

(a) Every employer shall keep the following records for each minor employee:

1. Full name, address, and occupational classification;
2. Date of birth;
3. A true and accurate record of hours worked each day including record of starting and stopping time, meal periods, total daily and weekly hours and amount of wages paid for each pay period.
4. Such other records as are essential in determining an employee's regular hourly wage and the amount of overtime wages earned and paid.

(b) Records shall be dated showing the payroll ending date by month, day and year, and all records shall be kept so as to enable representatives of the Office of Wage and Hour Compliance to determine readily whether or not the employer is complying with the orders of the Commissioner.

12:57-4.11 Posting

The notice issued by the Office of Wage and Hour Compliance setting forth the provisions of this subchapter shall be posted in a conspicuous place in every room where minors are employed in a beauty culture occupation.

SUBCHAPTER 5. LAUNDRY, CLEANING AND DYEING OCCUPATIONS

Authority

N.J.S.A. 34:11-56a19.

12:57-5.1 Scope

This subchapter shall apply to the minimum wage rate paid to all minors engaged in laundry, cleaning and dyeing occupations, irrespective of the nature of the business of the employer or the location of the place where the work is being performed.

Amended by R.1990 d.521, effective November 5, 1990.

See: 22 N.J.R. 2240(a), 22 N.J.R. 3382(a).

12:57-5.2 Definitions

"Laundry, cleaning and dyeing occupation" means any activity of a minor or any capacity in the marking, sorting, washing, cleansing, collecting, ironing, assembling, packaging, pressing, receiving, shipping or delivery, or any other activity including clerical work, directly incidental or essential to the laundering, cleaning or renovating of any articles of clothing, napery, blanket, rugs, carpets, draperies, bed clothing fabric, textile, fur or leather, when such activity is not performed in the original process of manufacturing.

12:57-5.3 Minimum wage

Minors under 18 years of age at laundry, cleansing and dyeing occupations shall be paid not less than the statutory minimum wage rate.

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

Delete reference to "\$3.10 per hour ..." after "minimum wage rate".

12:57-5.4 Overtime rate

(a) Overtime, at the rate of not less than one and one-half times the regular rate at which the employee is actually employed, shall be paid to each minor for hours worked in excess of 40 in any one week, except that the overtime rate shall not apply to an executive, professional or administrative employee who is paid for his services in accordance with N.J.A.C. 12:56-7.

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

(a)1 added.

Amended by R.1990 d.521, effective November 5, 1990.

See: 22 N.J.R. 2240(a), 22 N.J.R. 3382(a).

Deleted 1., N.J.S.A. reference.

12:57-5.5 Regular hourly wage

(a) "Regular hourly wage" means the amount that an employee is regularly paid for each hour of work as determined by dividing the total hours of work during the week into the employee's total earnings for the week, exclusive of overtime premium pay.

(b) The regular rate of pay at which the employee is employed shall not be less than the minimum rate established by N.J.A.C. 12:57-5.3.

(c) When an employee is paid on a piece work basis or any other basis than an hourly rate the regular hourly wage shall be determined by dividing the total of the hours worked during the week into the employee's total earnings exclusive of part time bonuses for the week and exclusive of wages earned at overtime rates as such rates are defined.

(d) The total computed earnings shall include commissions, bonuses, and all compensation paid by the employer except overtime pay.

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

(a): New definition substituted for old text.

12:57-5.6 Waiting time

Time during regular working hours and at other periods when employees are required to wait on the premises and no work is provided by the employer shall be counted as working time and paid at each employee's regular hourly wage.

12:57-5.7 Travel time

An employee who is required or authorized to travel from one establishment to another after the beginning or before the ending of his or her work day shall be compensated for travel time at not less than the employee's regular hourly wage and shall be reimbursed for travel expenses.

12:57-5.8 Piece work

No minor employed on a piece work basis or any basis other than a time basis shall for any week of employment be paid less than the amount that the employee would earn for the hours of employment at the minimum wage applicable.

12:57-5.9 Handicapped

No minor whose earning capacity has been impaired by physical or mental deficiency or injury shall be paid at less than the minimum wage, until a special license, in accordance with the provisions of N.J.S.A. 34:11-56a17(b), has been obtained by the employer from the Office of Wage and Hour Compliance.

Amended by R.1981 d.226, effective July 9, 1981.

See: 13 N.J.R. 307(a), 13 N.J.R. 441(c).

"34:11-56a17(b)" was "34:11-48".

12:57-5.10 Records

(a) Every employer shall keep the following records for each minor employee:

1. Full name, address, and occupational classification;
2. Date of birth;
3. A true and accurate record of hours worked each day, including a record of starting and stopping time, meal periods, total daily and weekly hours, and amount of wages paid for each pay period;
4. Such other records as are essential in determining an employee's regular hourly wage and the amount of overtime wages earned and paid.

(b) Records shall be dated showing the payroll ending date by month, day and year, and all records shall be kept as to enable representatives of the Office of Wage and Hour Compliance to determine readily whether or not the employer is complying with the orders of the Commissioner.

(c) Such records shall be open to inspection by the Commissioner at any reasonable time, and sworn copies shall be supplied to the Commissioner upon demand.

12:57-5.11 Posting

The notice issued by the Office of Wage and Hour Compliance, setting forth the provisions of this subchapter shall be posted in a conspicuous place in every room where minors are employed at laundry, cleaning, and dyeing occupations.