

**CHAPTER 56
WAGE AND HOUR**

Authority

N.J.S.A. 34:1-20; 34:1A-3(e); 34:2-21.64 and 34:11-56(a)19.

Source and Effective Date

R.1995 d.553, effective September 22, 1995.
See: 27 N.J.R. 2868(a), 27 N.J.R. 3958(a).

Executive Order No. 66(1978) Expiration Date

Chapter 56, Wage and Hour, expires on September 22, 2000.

Chapter Historical Note

Chapter 56, originally New Jersey State Wage and Hour Law, was filed and became effective prior to September 1, 1969. Chapter 56 was repealed and new Wage and Hour rules were adopted as R.1980 d.430, effective November 1, 1980.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 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 was readopted as R.1990 d.520, effective September 26, 1990. As a part of the readoption but effective November 5, 1990, N.J.A.C. 12:56-14.10 was recodified as new Subchapter 17, Uniforms, and Subchapter 16, Payroll Deductions for Mass Transportation, was recodified as new Chapter 55, Wage Payments. The original text of Subchapter 10 was amended by R.1990 d.520, which clarified the authority of the Commissioner of Labor in 12:56-10.5, Cancellation of permit, effective November 5, 1990. See: 22 N.J.R. 2235(a), 22 N.J.R. 3379(b). Pursuant to N.J.S.A. 2A:150A-1 and 34:11-56(a), specifically 34:11-56(a)17, Subchapter 10, originally Employment of Learners, Apprentices and Students, was repealed and new rules, Employment of Learners; Sub-Minimum Wage, were adopted as R.1992 d.328, effective August 17, 1992.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 was readopted as R.1995 d.553, effective September 22, 1995. As part of the readoption, Subchapter 10, Employment of Learners; Sub-Minimum Wage, was repealed, and Subchapter 18, School-to-Work Program, was adopted as new rules, effective October 16, 1995. See: Source and Effective Date. See, also, section annotations.

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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 comply with such request or demand will prevent such worker from procuring or retaining employment; or

8. Otherwise violates any provision of this chapter or of any order issued under this chapter.

(b) An employer who knowingly and willfully violates any provision of N.J.S.A. 34:11-56a et seq. shall be guilty of a disorderly persons offense and shall, upon conviction for a first violation, be punished by a fine of not less than \$100.00 nor more than \$1,000, or by imprisonment for not less than 10 nor more than 90 days, or by both the fine and imprisonment.

(c) The employer shall, upon conviction for a second or subsequent violation, be punished by a fine of not less than \$500.00 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment.

(d) Each week in any day of which an employee is paid less than the rate applicable to him or her under the Act or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

(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 employee 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.

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. 12:56-7.5, every employer shall pay to each of his or her employees, wages at a rate of not less than 1½ 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).

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

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

12:56-18.2 School-to-work program requirements

(a) The following conditions shall be met to allow for non-paid activities of student learners at for profit and not-for-profit organizations:

1. The student shall be at least 16 years of age;
2. The activity must be related to a formal school-to-work transition plan for a student learner;
3. There is collaboration and planning between work-site staff and school staff resulting in clearly identified learning objectives related to the non-paid activities;
4. Any productive work is incidental to achieving learning objectives;
5. The student learner receives credit for time spent at the worksite and the student is expected to achieve the learning objectives;
6. The student learner is supervised by a school official and a workplace mentor;
7. The non-paid activity is of a limited duration, related to an educational purpose and there is no guarantee or expectation that the activity will result in employment; and

8. The student learner does not replace an employee.

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

APPENDIX A

AVAILABILITY OF STANDARDS REFERRED TO IN THIS CHAPTER

A copy of each of the standards referenced in this chapter is on file and may be inspected at the following office between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
Division of Workplace Standards
John Fitch Plaza
Trenton, New Jersey

Copies of the referenced standards may be obtained from the following office:

Office of Wage and Hour Compliance
New Jersey Department of Labor
CN 389
Trenton, New Jersey 08625

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