



State of New Jersey

N.J.
W

DEPARTMENT OF LABOR AND INDUSTRY,

RAYMOND F. MALE, COMMISSIONER

JOHN FITCH PLAZA
TRENTON, NEW JERSEY

PLEASE REPLY
TO WRITER AT
THIS ADDRESS

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NOTICE OF PUBLIC HEARING

Proposed

The attached regulations are proposed for Chapter 113, Laws of New Jersey, 1966, known as the "New Jersey State Wage and Hour Law".

A public hearing will be held November 28, 1966 at 10:00 A.M. in the 13th floor auditorium of the Department of Labor and Industry Building, John Fitch Plaza, Trenton, New Jersey, at which any person may be heard.

William J. Clark, Director
Wage and Hour Bureau for and
on behalf of the Commissioner
of Labor and Industry

Dated: November 16, 1966

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REGULATIONS

CHAPTER 113 LAWS OF N.J. 1966

REGULATION 1. - RECORDS

1.1 Every employer shall keep records which contain the name and address of each employee, the birth date if under the age of eighteen, the hours worked each day and each work week, earnings, including the regular hourly wage for any week when hours worked exceed 40, and the basis on which wages are paid (such as "\$1.50 an hour", "\$60.00 a week", "Piece work" etc.)

1.2 The employer may use any system of time keeping containing the items specified in paragraph 1.1 provided it is a complete, true, and accurate record.

1.3 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 week that the schedule was followed. When the employee works longer or shorter hours than the schedule indicates, the employer shall record the hours the worker actually worked.

1.4 Records containing the information required by these regulations shall be kept for six years.

1.5 Records must be kept at the place of employment or in a central office in New Jersey. In those unusual circumstances where it is not feasible to keep records in New Jersey, special exemption from this provision must be obtained from the Commissioner or his authorized representative. All records shall be open to inspection by the Commissioner or the Director or their authorized representatives at any reasonable time.

1.6 Supplementary to the provisions of any section of the regulations pertaining to the records to be kept with respect to employees, 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.

1.7 Employees receiving gratuities must report them either daily or weekly as required by the employer. The information in the report must 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.

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

1.9 Supplementary to the provisions of any section of the regulations pertaining to the records to be kept with respect to employees, every employer of employees who receive food or lodgings supplied by the employer shall maintain and preserve records substantiating the cost of furnishing such food or lodgings.

1.10 Such records shall include the nature and amount of any expenditures entering into the computation of the fair value of the food and lodgings as defined in these regulations and shall contain the data 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 or his representatives to verify the nature of the expenditure and amount by reference to the basic records which must be preserved pursuant to these regulations.

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CHAPTER 113 LAWS OF N.J. 1966

REGULATION 1. - RECORDS

1.11 If additions to wages paid so affect the total cash wages due in any workweek as to result (1) in the employee receiving less in cash than the minimum hourly wage provided in the Law or in any applicable wage order or (2) 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.

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REGULATION 2. - HOURS WORKED

2.1 Employees who are entitled to the benefits of the New Jersey State Wage and Hour Law must be paid for all hours worked.

2.2 All time the employee is required to be at his place of work or on duty is to be counted as hours worked. Nothing in this law requires an employer to pay an employee for hours the employee is not required to be at his place of work because of holidays, vacation, lunch hours, illness, and similar reasons.

2.3 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, if pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, be compensated for not less than eight hours for each day on duty in lieu of any other applicable provisions.

2.4 A workweek is a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods. The workweek need not be the same as the calendar week; it may begin any day of the week and any hour of the day. The workweek shall be designated in advance. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked. 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 law.

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REGULATION 3. - OVERTIME

3.1 Effective December 15, 1966 for each hour of working time in excess of 40 hours in any week, every employer shall pay to each of his employees, wages at a rate of not less than one and one-half times such employee's regular hourly wage.

3.2 Overtime and minimum wage pay must be computed on the basis of each workweek standing alone. Hours cannot be averaged over two or more workweeks.

3.3 Covered employees are entitled to overtime pay based upon their actual wages and not the specified minimum wages.

3.4 Covered employees are to be paid one and one-half times the regular hourly wage for each hour of working time in excess of 40 hours in any workweek. There is no requirement that an employee be paid premium overtime compensation for hours in excess of eight per day, or for work on Saturdays, Sundays, holidays or regular days of rest, other than the required overtime for over 40 hours per week. However, nothing in the Law will relieve an employer of any obligation he may have assumed by contract or of any obligation imposed by other State or Federal law to limit overtime hours of work or to pay premium rates for work which are in excess of the minimum required by this Law.

3.5 The "regular hourly wage" under the Law is a rate per hour. The Law 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 must be paid on the basis of the hourly rate derived therefrom. Therefore, the regular hourly wage of an employee is determined by dividing his 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. If an employee is remunerated solely on the basis of a single hourly rate, the hourly rate is his "regular hourly wage."

3.6 The "regular hourly wage" shall not be deemed to include:

(a) Payments in the nature of gifts made at Christmas time 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;

(b) Payments made for occasional periods when no work is performed due to vacation, holiday, or other similar cause; reasonable payments for traveling or other expenses incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer which are not made as compensation for employment;

(c) Sums paid in recognition of services performed during a given period if either:

(1) both the fact that payment is to be made and the amount of the 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

(2) 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

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REGULATION 3. - OVERTIME

(d) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees; or

(e) Additional premium compensation for hours worked in excess of eight per day, or for work on Saturdays, Sundays, holidays, or regular days of rest; or

(f) Overtime premiums.

3.7 Overtime premium payments cannot 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 are therefore cash payments by the employer. 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 the law if the premium payment for the overtime hours is paid in cash on the basis of the agreed regular hourly wage but in no event shall the premium payment be at a rate less than the applicable minimum rate.

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REGULATION 4. - EXEMPTIONS FROM OVERTIME

4.1 Executive

The term "executive" shall mean any employee:

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

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who devotes less than 20% of his work week to non-exempt work (less than 40% if employed by a retail or service establishment); and

(f) Who is compensated for his services on a salary basis at a rate of not less than \$100 per week, exclusive of gratuities, board, lodging, or other facilities.

(g) The term "executive" shall also include employees owning a bona fide equity in the enterprise of 20 per cent or more.

The term "executive" does not include employees training to become executives and not actually performing the duties of an executive.

4.2 Administrative

The term "administrative" shall mean any employee:

(a) Whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c) (1) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in these regulations), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who devotes less than 20% of his work to non-exempt work (less than 40% if employed by a retail or service establishment); and

(e) Who is compensated for his services on a salary or fee basis at a rate of not less than \$100 per week, exclusive of gratuities, board, lodging, or other facilities.

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CHAPTER 113 LAWS OF N.J. 1966

REGULATION 4. - EXEMPTIONS FROM OVERTIME

4.3 Professional

The term "professional" shall mean any employee:

(a) Whose primary duty consists of the performance of work:

(1) 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

(2) 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; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) 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 in relation to a given period of time; and

(d) Who devotes less than 20% of his work week to non-exempt work; and

(e) Who is compensated for his services on a salary or fee basis at a rate of not less than \$100 per week, exclusive of gratuities, board, lodging, or other facilities.

4.4 Outside Salesmen

The term "outside salesmen" shall mean any employee:

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

(1) Making sales, or

(2) 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

(b) Whose hours of work of a nature other than that described in paragraph (a) (1) or (a) (2) of this section do not exceed 20 per cent of hours worked in the workweek by the outside salesman:

Provided, that work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall be regarded as exempt work. Employees who basically drive vehicles and who only incidentally or occasionally make sales do not qualify for this exemption.

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REGULATION 5. - GRATUITIES, FOOD, LODGING

5.1 Gratuities

(a) The term "wages", as used in the Law, includes gratuities received by an employee for services rendered for an employer or a customer of an employer and the fair value of any food or lodging supplied by an employer to an employee.

(b) Only cash gratuities actually received by an employee are to be considered wages.

(c) Where employees practice gratuity splitting (for example, where waiters pay a portion of the gratuities received by them to busboys) each employee is to have included in wages only the applicable proportionate share.

(d) In determining the cash gratuities actually received by an employee, the following methods shall be of evidentiary value:

(1) Statements, including U.S. Treasury Department, Internal Revenue Service, "Employee's Report on Tips", that are furnished by employee to employer.

(2) Amounts indicated on customer billing, credit card invoices or other customer charge accounts wherein there is an indicated service charge or gratuity designated for the employee and payable to the employee.

(e) Provided there is agreement in advance with the employees, the employer, in order to facilitate the administrative handling of gratuity allowances, may establish an average value of gratuities received by an employee in his establishment based upon a percentage of gross sales apportioned on basis of hours worked among the tipping occupation employees.

(1) derived from a representative sampling of the sources indicated in paragraphs (d) (1) and (2), or

(2) 10 per cent, or

(3) such other method as may be agreed upon subject to the approval of the Commissioner.

(f) In no event shall paragraphs (d) and (e) above be interpreted to deny to an employee the right to make a claim for additional cash compensation where it is shown to the satisfaction of the Bureau that the actual amount of tips received was less than the amount determined by the employer.

5.2 Food and Lodging

(a) "Fair value" is hereby determined to be not more than the actual cost to the employer of the food or lodging supplied by an employer to an employee.

(b) "Fair value" does not include a profit to the employer or to any affiliated business or person.

(c) Except whenever any determination made by regulation is applicable, the "fair value" to the employer of furnishing the employee with food and lodging is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 6 per cent) for interest on the depreciated amount of capital invested by the employer. The "fair value" so computed shall not exceed the rental value of comparable facilities in the State. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be arrived at under good accounting practices. "Good accounting practices" does not include those rejected by the New Jersey Division of Taxation or the Federal Internal Revenue Service for tax purposes, and the term "depreciation" includes obsolescence.

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REGULATION 5. - GRATUITIES, FOOD, LODGING

(d) Items found to be primarily for the benefit or convenience of the employer are not to be included in the cost. Lodging furnished which is in violation of any Federal, State, or local law, ordinance or prohibition shall be valued at nothing.

(e) Methods of determining fair value shall be subject to inspection and approval by the Commissioner.

(f) Example: Employer A has three employees who are furnished food and lodging in addition to gross cash wages of \$1.00 per hour. The cost of food purchased for the employees is \$36.00 total a week. The building housing the employees cost \$18,000.00 in 1956 and subsequent improvements amounted to \$2,000.00. Maintenance costs for the year were \$1,240.00. The estimated life of the building when constructed was fifty years. The building can adequately house six persons.

The "fair value" of food for the week is determined as follows:

Total cost.....	\$	36.00
Fair value per employee ($\$36.00 \div 3$).....	\$	<u>12.00</u>

The "fair value" of lodging for year 1966 is determined as follows:

Cost of building in 1956.....	\$	18,000.00
Add: Subsequent improvements.....		2,000.00
Total cost.....	\$	<u>20,000.00</u>

Depreciation for year ($1/50 \times \$20,000.00$).....	\$	400.00
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Maintenance costs for year.....	\$	1,240.00
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Interest on employer's net investment:		
Total investment.....	\$20,000.00	
Depreciation to date....	4,000.00	
Net Investment.....	<u>\$16,000.00</u>	
6%.....		<u>960.00</u>

Total for year.....	\$	<u>2,600.00</u>
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Total for week ($\$2,600 \div 52$).....	\$	<u>50.00</u>
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Fair value per employee ($\$50.00 \div 6$ capacity).....	\$	<u>8.33</u>
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Assume that employee B worked 40 hours in a particular week. His wage would be as follows:

Gross cash wages ($40 \times \$1.00$).....	\$	40.00
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Fair value of food.....		12.00
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Fair value of lodging.....		<u>8.33</u>
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Gross weekly wage.....	\$	60.33
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Hourly wage ($\$60.33 \div 40$).....	\$	<u>1.51</u>
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CHAPTER 113 LAWS OF N.J. 1966

REGULATION 5. - GRATUITIES, FOOD, LODGING

Assume that employee B worked 48 hours in a particular week. His wage entitlement would be as follows:

Total earnings exclusive of overtime premium pay:	
Gross cash wages (48 hours x \$1.00)	\$48.00
Fair value of food.....	12.00
Fair value of lodging.....	<u>8.33</u>
Total straight time wages.....\$	68.33
Overtime Wages:	
Regular hourly wage ($\$68.33 \div$	
48 hours worked)	$= \$1.424$
Overtime pay 8 x .712 ($\$1.424 \times 1/2$).....	<u>5.69</u>
Employee B wage entitlement for 48 hours.....\$	<u><u>74.02</u></u>

5.3 Cash wage guarantee

In food service occupations an employee's cash wages shall not fall below 66¢ per hour after allowances are made for gratuities, food and lodging.

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REGULATION 6. - EMPLOYMENT OF HANDICAPPED PERSONS

6.1 Definitions:

(a) "Handicapped person" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury or previous confinement in a mental or correctional institution and who is being served in accordance with the recognized rehabilitation program of a sheltered workshop, educational institution, or other program of rehabilitation approved by the Commissioner.

(b) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, and of providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

6.2 Authorization to employ handicapped persons at wages less than minimum fair wage rates for such period of time fixed and stated in the authorization may be issued upon proper application. This authorization shall be known as a "Special Handicap Permit". A blanket Special Handicap Permit may be issued for an entire Sheltered Workshop or a department of a Sheltered Workshop.

6.3 Application for a Special Handicap Permit shall be filed with the Department of Labor and Industry, Wage and Hour Bureau, on properly executed prescribed forms.

6.4 The following criteria may be considered in determining the necessity of issuing a Special Handicap Permit:

- (a) The present and previous earnings of handicapped employees;
- (b) The nature and extent of the handicap;
- (c) The wages of non-handicapped employees engaged in comparable work;
- (d) The types and duration of rehabilitative services;
- (e) The extent to which handicapped persons share, through wages, in the receipts for work done;
- (f) The extent to which the handicapped employees are learners;
- (g) Whether there exists any employer arrangement with customers or subcontractors which appears to be an unfair method of competition which tends to spread or perpetuate substandard wage levels;
- (h) The productivity of the handicapped employee.

6.5 All terms and conditions under which a Special Handicap Permit is granted shall be complied with.

6.6 No individual who is not a handicapped person shall be employed under a Special Handicap Permit at wages lower than the minimum required by Chapter 113, Laws of New Jersey, 1966.

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REGULATION 6. - EMPLOYMENT OF HANDICAPPED PERSONS

6.7 The Commissioner or his authorized representative may cancel any Special Handicap Permit for cause. A Special Handicap Permit may be cancelled as of the date of issuance, if it is found that fraud has been exercised in obtaining the Special Handicap Permit or in permitting a handicapped person to work thereunder; or as of the date of the violation, if it is found that any of the provisions of Chapter 113, Laws of New Jersey, 1966, or of the terms of the Special Handicap Permit have been violated; or as of the date of notice of cancellation if in the judgment of the Commissioner the Special Handicap Permit is no longer necessary in the interest of the employees covered.

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REGULATION 7. - EMPLOYMENT OF LEARNERS, APPRENTICES, AND STUDENTS

7.1 Authorization to employ learners, apprentices and students at wages less than the minimum fair wage rates for such period of time fixed and stated in the authorization may be issued upon proper application when in the opinion of the Commissioner such authorization is necessary in order to prevent curtailment of opportunities of employment. This authorization shall be known as a "Special Learner, Apprentice, and Student Permit".

7.2 Application for a Special Learner, Apprentice, and Student Permit shall be filed with the Department of Labor and Industry, Wage and Hour Bureau on properly executed prescribed forms.

7.3 All terms and conditions under which a Special Learner, Apprentice, and Student Permit is granted shall be complied with.

7.4 No individual who is not a learner, apprentice, or student shall be employed under a Special Learner, Apprentice, and Student Permit at wages lower than the minimum required by Chapter 113, Laws of New Jersey, 1966.

7.5 The Commissioner or his authorized representative may cancel any Special Learner, Apprentice, and Student Permit for cause. A Special Learner, Apprentice, and Student Permit may be cancelled as of the date of issuance, if it is found that fraud has been exercised in obtaining the Special Learner, Apprentice, and Student Permit or in permitting a learner, apprentice or student to work thereunder; or as of the date of the violation, if it is found that any of the provisions of Chapter 113, Laws of New Jersey, 1966, or of the terms of the Special Learner, Apprentice, and Student Permit have been violated; or as of the date of notice of cancellation if in the judgment of the Commissioner the Special Learner, Apprentice, and Student Permit is no longer necessary in the interest of the employees covered.

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REGULATION 8. - PERSONS UNDER THE AGE OF EIGHTEEN

8.1 These persons are excluded only from the statutory wage rates established by Section 5 of the Law. The New Jersey State Wage and Hour Law supplements Article 2 of Chapter II of Title 34 of the Revised Statutes. The new law supersedes the old only when the employees' entitlement under it exceeds the pre-existing law. Therefore, persons under the age of eighteen remain covered by wage order rates in Mercantile, Restaurant, Beauty Culture, and Laundry and Cleaning and Dyeing occupations.