

CHAPTER 35

**WORK FIRST NEW JERSEY AND FOOD STAMP
EMPLOYMENT AND TRAINING PROGRAM**

Authority

N.J.S.A. 34:1-20, 34:1A-3(e) and 44:8-114.

Source and Effective Date

R.2005 d.429, effective November 9, 2005.
See: 37 N.J.R. 2605(a), 37 N.J.R. 4557(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 35, Work First New Jersey and Food Stamp Employment and Training Program, expires on May 8, 2011. See: 42 N.J.R. 3043(a).

Chapter Historical Note

Chapter 35, Workfare, was adopted as R.1980 d.162, effective May 1, 1980. See: 12 N.J.R. 128(b), 12 N.J.R. 280(b). Pursuant to Executive Order No. 66(1978), Chapter 35 expired on May 1, 1985.

Chapter 35, Workfare, was adopted as new rules by R.1985 d.404, effective August 5, 1985. See: 17 N.J.R. 1048(a), 17 N.J.R. 1896(a).

Pursuant to Executive Order No. 66(1978), Chapter 35, Workfare, was readopted as R.1990 d.396, effective July 16, 1990. See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).

Pursuant to Executive Order No. 66(1978), Chapter 35, Workfare, was readopted as R.1995 d.363, effective June 12, 1995. See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).

Subchapter 6, Placement or Use of Work First Participants at Worksite, was adopted as Emergency New Rules by R.1997 d.310, effective June 30, 1997, to expire August 29, 1997. See: 29 N.J.R. 3361(a). The provisions of R.1997 d.310 were adopted by R.1997 d.401, effective August 28, 1997. See: 29 N.J.R. 3361(a), 29 N.J.R. 4287(c).

Subchapter 2, Location of Worksite Activity, Subchapter 3, Scheduling Worksite Assignments, Subchapter 4, Types of Work Allowable Under Worksite Activities, and Subchapter 5, Failure to Comply, were repealed and Subchapter 6, Placement or Use of Work First Participants at Workplace, was recodified as Subchapter 2, Placement or Use of Work First/FSETP Participants at Workplace, by R.1998 d.65, effective January 20, 1998. See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Pursuant to Executive Order No. 66(1978), Chapter 35, Work First New Jersey/General Assistance Program, was readopted as R.2000 d.281, effective June 12, 2000. See: 32 N.J.R. 1281(a), 32 N.J.R. 2442(b).

Chapter 35, Work First New Jersey/General Assistance Program, was readopted as R.2005 d.429, effective November 9, 2005. As a part of R.2005 d.429, Chapter 35 was renamed Work First New Jersey and Food Stamp Employment and Training Program, effective December 5, 2005. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:35-1.1 Purpose and scope
- 12:35-1.2 Definitions
- 12:35-1.3 through 12:35-1.7 (Reserved)

**SUBCHAPTER 2. PLACEMENT OR USE OF WORK
FIRST/FSETP PARTICIPANTS AT WORKPLACE**

- 12:35-2.1 Prohibition on replacing or displacing regular employees
- 12:35-2.2 Complaint procedures: State service employees
- 12:35-2.3 Complaint procedures: Non-State service employees

SUBCHAPTERS 3 THROUGH 6. (RESERVED)

APPENDICES 1 THROUGH 4. (RESERVED)

SUBCHAPTER 1. GENERAL PROVISIONS

12:35-1.1 Purpose and scope

(a) These rules establish procedures to resolve complaints concerning the placement or use of Work First New Jersey (Work First) and the Food Stamp Employment and Training Program (FSETP) participants in the Community Work Experience Program (CWEP) and Alternative Work Experience Program (AWEP) at nonprofit and public agencies.

(b) These rules apply to regular employees who believe they have been adversely affected by the placement or use of Work First New Jersey or Food Stamp Employment and Training Program (FSETP) participants at their worksite. The rules also apply to nonprofit and public agencies at which the work activity is performed and to government agencies responsible for reviewing these complaints.

Repeal and New Rule, R.1990 d.396, effective August 6, 1990.
See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).
Emergency amendment R.1997 d.310, effective June 30, 1997 (to expire August 29, 1997).
See: 29 N.J.R. 3361(a).

In (a), inserted reference to new name of program and substituted "workplace" for "worksite"; inserted new (b); recodified former (b) to (c); and in (c), amended to whom rules applicable.
Adopted concurrent proposal, R.1997 d.401, effective August 28, 1997.
See: 29 N.J.R. 3361(a), 29 N.J.R. 4287(c).
Amended by R.1998 d.65, effective January 20, 1998.
See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Deleted (a); and recodified former (b) and (c) as (a) and (b).
Amended by R.2005 d.429, effective December 5, 2005.
See: 37 N.J.R. 2605(a), 37 N.J.R. 4557(a).

In (a) and (b), substituted "and public agencies" for " , public and other workplaces."

12:35-1.2 Definitions

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

"Food Stamp Employment and Training Program or FSETP" means the program established by the New Jersey Department of Human Services pursuant to N.J.S.A. 10:87.

"Work First New Jersey Program or WFNJ" means the program established by the Department of Human Services pursuant to P.L. 1997, c.38.

"Work First/FSETP participant" means a person who participates in the CWEP/AWEP and has been assigned to a nonprofit or public agency under the Work First New Jersey Program or FSETP.

“Workplace” means a nonprofit, public or other workplace to which a Work First/FSETP participant is assigned to work.

New Rule, R.1990, d.396, effective August 6, 1990.
See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).

Recodified to 12:35-1.3.

Section was registration and reporting requirements forms.
Emergency amendment R.1997 d.310, effective June 30, 1997 (to expire August 29, 1997).

See: 29 N.J.R. 3361(a).

Added “Work First New Jersey Program or WFNJ”, “Work First/FSETP participant” and “Workplace”.

Adopted concurrent proposal, R.1997 d.401, effective August 28, 1997.

See: 29 N.J.R. 3361(a), 29 N.J.R. 4287(c).

Amended by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Added “Food Stamp Employment and Training Program or FSETP”; deleted “Agency”, “Employment Service”, “GA”, “General Assistance Employability Program or Workfare”, “Municipal worksite agreements”, “Participant”, “Recipient”, and “Worksite agent”; and amended “Work First/FSETP Participant”.

Amended by R.2005 d.429, effective December 5, 2005.

See: 37 N.J.R. 2605(a), 37 N.J.R. 4557(a).

In “Work First/FSETP participant” definition, substituted “or public agency” for “, public or other workplace.”

12:35-1.3 (Reserved)

Amended by R.1985 d.404, effective August 5, 1985.

See: 17 N.J.R. 1048(a), 17 N.J.R. 1896(a).

Amended (a); added (b), (c), (d).

Amended by R.1990 d.396, effective August 6, 1990.

See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).

Recodified from 12:35-1.2. Added new (a); redesignated existing (a)-(d) as (b)-(e). In (e), added last sentence.

Amended by R.1995 d.363, effective July 3, 1995.

See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).

In (a) inserted “not specifically exempted by the municipal welfare department from workfare due to participation in the work training requirements of the Family Development Program in accordance with N.J.A.C. 10:86”; deleted (b); and recodified existing (c) to (e) as (b) to (d).

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Section was “Registration and reporting requirements”.

12:35-1.4 (Reserved)

Amended by R.1985, d.404, effective August 5, 1985.

See: 17 N.J.R. 1048(a), 17 N.J.R. 1896(a).

Amended (a) and (b); added (c), (d), (e).

Amended by R.1990, d.396, effective August 6, 1990.

See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).

Recodified from 12:35-1.3. Stylistic revisions.

Amended by R.1995 d.363, effective July 3, 1995.

See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).

In (b) added the second sentence.

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Section was “Accident insurance coverage requirements”.

12:35-1.5 (Reserved)

Amended by R.1985, d.404, effective August 5, 1985.

See: 17 N.J.R. 1048(a), 17 N.J.R. 1896(a).

Added job title description, hours per month and forwarding copy of notice for evaluation.

Amended by R.1990, d.396, effective August 6, 1990.

See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).

Recodified from 12:35-1.4. In (a), added 1-8; added (b) and (c).

Amended by R.1995 d.363, effective July 3, 1995.

See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).

Rewrote (a) and (b); and deleted (c).

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Section was “Worksite assignments; agreement forms”.

12:35-1.6 (Reserved)

Repeal and New Rule, R.1985, d.404, effective August 5, 1985.

See: 17 N.J.R. 1048(a), 17 N.J.R. 1896(a).

Amended by R.1990, d.396, effective August 6, 1990.

See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).

Recodified from 12:35-1.5. Stylistic revisions.

Amended by R.1995 d.363, effective July 3, 1995.

See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).

Following “shall be” deleted “made and”.

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Section was “Worksite Assignments; evaluations”.

12:35-1.7 (Reserved)

Repeal and New Rule, R.1985, d.404, effective August 6, 1985.

See: 17 N.J.R. 1048(a), 17 N.J.R. 1896(a).

Amended by R.1990, d.396, effective August 6, 1990.

See: 22 N.J.R. 1430(a), 22 N.J.R. 2326(b).

Recodified from 12:35-1.6. Stylistic revisions.

Amended by R.1995 d.363, effective July 3, 1995.

See: 27 N.J.R. 1740(a), 27 N.J.R. 2589(a).

Added the second and third sentences.

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Section was “Attendance and worksite activity; monitoring”.

SUBCHAPTER 2. PLACEMENT OR USE OF WORK FIRST/FSETP PARTICIPANTS AT WORKPLACE

12:35-2.1 Prohibition on replacing or displacing regular employees

(a) A Work First New Jersey recipient who participates in CWEP or AWEP, or a FSETP participant, shall not be placed or utilized in a position at a nonprofit or public agency:

1. That was previously filled by a regular employee if the position or a substantially similar position at the workplace has been made vacant through a demotion, substantial reduction of hours or a layoff of a regular employee in the previous 12 months, or has been eliminated by the employer at any time during the previous 12 months;
2. In a manner that infringes upon a wage rate or an employment benefit or violates the contractual overtime provisions of a regular employee at the workplace;
3. In a manner that violates an existing collective bargaining agreement or a statutory provision that applies to the workplace;
4. In a manner that supplants or duplicates a position in an existing, approved apprenticeship program;
5. By or through an employment agency or temporary help service firm as a community work experience or alternative work experience worker;

6. If there is a contractual or statutory recall right to that position at that workplace; or

7. If there is an ongoing strike or lockout at that workplace.

(b) A Work First New Jersey recipient who participates in CWEP or AWEP, or a FSETP participant, shall not be placed or utilized in a position at a private sector for-profit workplace.

Amended by R.2005 d.429, effective December 5, 2005.
See: 37 N.J.R. 2605(a), 37 N.J.R. 4557(a).

In the introductory paragraph of (a), substituted "participant" for "recipient" and "or public agency" for "public or other workplace"; substituted "shall be placed" for "shall not be placed", and added (b).

Administrative correction.
See: 42 N.J.R. 2806(c).

12:35-2.2 Complaint procedures: State service employees

(a) Any State employee who believes he or she has been adversely affected by a violation of N.J.A.C. 12:35-2.1, or his or her duly authorized union representative, may file a complaint with the Governor's Office of Employee Relations.

1. The complaint shall be filed and reviewed pursuant to the State contract under which the complainant is covered.

2. The complaint shall be filed within 30 days of either the Work First/FSETP participant's placement or use at the workplace, or the date on which the complainant should reasonably have known of his or her placement or use, or 30 days of when the alleged violation of N.J.A.C. 12:35-2.1 occurred.

3. A copy of the complaint shall be forwarded to the Division of Family Development within the Department of Human Services and to the Division of One-Stop Programs and Services, within the Department of Labor and Workforce Development.

4. The Governor's Office of Employee Relations shall investigate and render a decision as to the appropriateness of the Work First/FSETP participant's placement or use at the worksite within 30 days of receipt of the complaint.

5. The complainant or his or her duly authorized union representative may appeal the decision of the Governor's Office of Employee Relations within 30 days of receipt of the decision pursuant to the State contract under which the complainant is covered.

6. The Governor's Office of Employee Relations shall set up an arbitration proceeding pursuant to the State contract under which the complainant is covered upon the receipt of the appeal.

7. The arbitrator shall determine whether a violation of N.J.A.C. 12:35-2.1 above has occurred and, if so, shall provide an appropriate legal remedy.

8. The cost of the arbitration shall be shared equally by both parties.

Amended by R.1998 d.65, effective January 20, 1998.
See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

In (a)2, added 30 day period in reference to N.J.A.C. 12:35-2.1.
Amended by R.2000 d.281, effective July 3, 2000.

See: 32 N.J.R. 1281(a), 32 N.J.R. 2442(b).

In (a)3, substituted a reference to the Division of Employment and Training for a reference to the Division of Workforce New Jersey—Careers.

Amended by R.2005 d.429, effective December 5, 2005.
See: 37 N.J.R. 2605(a), 37 N.J.R. 4557(a).

In (a)3, substituted "One-Stop Programs and Services" for "Employment and Training" and added "and Workforce Development" following "Department of Labor."

12:35-2.3 Complaint procedures: Non-State service employees

(a) Any non-State employee who believes he or she has been adversely affected by a violation of N.J.A.C. 12:35-2.1, or his or her duly authorized union representative, may file a complaint with the Deputy Assistant Commissioner, Division of One-Stop Programs and Services, within the Department of Labor and Workforce Development.

1. The complaint shall be filed within 30 days of either the Work First/FSETP participant's placement or use at the workplace or, the date on which the complainant should reasonably have known of his or her placement use or 30 days of when the alleged violation of N.J.A.C. 12:35-2.1 occurred.

2. The complaint shall be made in writing and specify the basis for the complaint.

3. Each party shall serve copies of the complaint and any supplemental material submitted on the other party.

4. A copy of the complaint shall be forwarded to the Division of Family Development within the Department of Human Services.

5. A party may review the file at the offices of the Division of One-Stop Programs and Services during regular business hours.

(b) The Deputy Assistant Commissioner, Division of One-Stop Programs and Services, or his or her designee, shall investigate the complaint and render a written decision as to the appropriateness of the Work First/FSETP participant's placement or use at the workplace within 10 days of receipt of the complaint.

1. If the Deputy Assistant Commissioner, Division of One-Stop Programs and Services, or his or her designee, determines that the placement or use of the Work First/FSETP participant violates N.J.A.C. 12:35-2.1, he or she shall notify the agency responsible for placement that the placement or use is not appropriate and that the participant should be immediately removed from the position.

2. The decision of the Deputy Assistant Commissioner, Division of One-Stop Programs and Services, or his or her designee, shall advise the parties of the right to appeal to the New Jersey State Board of Mediation for an expedited binding arbitration.

(c) A complainant or his or her duly authorized union representative may appeal the final decision of the Deputy Assistant Commissioner, Division of One-Stop Programs and Services to the Board of Mediation within 10 days of receipt of the decision.

1. Upon receipt of an appeal, the Board of Mediation shall provide expedited binding arbitration in accordance with its rules at N.J.A.C. 12:105.

2. The arbitrator shall determine whether a violation of N.J.A.C. 12:35-6.1 has occurred and, if so, the arbitrator shall provide an appropriate legal remedy.

3. The cost of the arbitration shall be shared equally by both parties.

Amended by R.1998 d.65, effective January 20, 1998.
See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

In (a)1, added 30 day period in reference to N.J.A.C. 12:35-2.1; and in (c), inserted a reference to duly authorized union representatives.

Amended by R.2000 d.281, effective July 3, 2000.
See: 32 N.J.R. 1281(a), 32 N.J.R. 2442(b).

Rewrote the section.

Amended by R.2005 d.429, effective December 5, 2005.
See: 37 N.J.R. 2605(a), 37 N.J.R. 4557(a).

In the introductory paragraphs of (a) and (c) and throughout (b), substituted "Deputy Assistant Commissioner, Division of One-Stop Programs and Services" for "Director, Division of Employment and Training"; added "and Workforce Development" following "Department of Labor" to the introductory paragraph of (a); in (a)5 substituted "One-Stop Programs and Services" for "Employment and Training."

SUBCHAPTERS 3 THROUGH 6. (RESERVED)

APPENDIX 1

(RESERVED)

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Was "General Assistance Employability Program".

APPENDIX 2

(RESERVED)

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Was "Individual Worksite Agreement".

APPENDIX 3

(RESERVED)

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Was "General Assistance Employability Program Training Worksite Agreement".

APPENDIX 4

(RESERVED)

Repealed by R.1998 d.65, effective January 20, 1998.

See: 29 N.J.R. 4622(a), 30 N.J.R. 371(a).

Was "General Assistance Employability Program Individual Training Worksite Agreement".