

Summary

The Department of Community Affairs' (Department) Organizational Rules at N.J.A.C. 5:2 were scheduled to expire on October 22, 2017. As the Department submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to April 20, 2018, pursuant to N.J.S.A. 52:14B-5.1.c(2). Upon review of these rules, the Department has determined that the existing rules are necessary, reasonable, and proper for the purpose for which they originally were promulgated and the Department, therefore, will readopt them.

The chapter proposed for readoption includes subchapters on the processing of petitions for rules that are submitted to the Department under N.J.S.A. 52:14B-4(f) and for automatic extensions of licenses and certifications issued by the Department to persons who are on active duty in the armed forces. Additionally, the Department has determined that the rules should be revised to include the rule proposal notice provisions in N.J.S.A. 52:14B-4 and N.J.A.C. 1:3-5.2. The new rule will provide that the Department will satisfy the additional publicity requirement by posting proposed rules on its website.

New Subchapter 4, Public Notice of Proposed Rulemakings, provides that, in addition to publication in the New Jersey Register, the Department will make a notice of proposal available by providing it to those who have timely requested advance notice of notices of proposals, distributing it to the news media with offices in the State House, and posting it on the Department's website, which will also act as "other secondary notice" pursuant to N.J.A.C. 1:30-5.2(a)6ii(4).

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with a new rule will allow members of the public to easily obtain information as to how they might go about filing petitions for changes to the Department's administrative rules. It will also keep in place a license or certification extension program that was adopted in order to make sure that persons who are called to active military service do not lose their licenses or certifications because of their temporary inability to comply with the renewal requirements while they are otherwise occupied in the service of our country. The proposed new rules implement the intention of the Administrative Procedures Act, that the public receive notice of an agency's proposed rulemaking. By setting forth the notice procedures in rules, the public will know where and how to access the Department's proposed rules.

Economic Impact

The rules proposed for readoption with a new rule are necessary in order to avoid any adverse economic impact upon any license or certification holder serving in the armed forces who might otherwise lose his or her license or certification because of inability to renew it in a timely manner. The Department will not incur any additional cost. The Department already provides proposed rules to those who have requested advanced notice of the Department's rule notices of proposals and to the State House news media. Additionally, the Administrative Procedures Act requires the Department to post notices of proposals on the Department's website. Therefore, posting all notices of proposals on the website to satisfy the additional publicity requirement likewise does not add any cost.

Federal Standards Statement

No Federal standards analysis is required because the rules proposed for readoption with a new rule do not implement, comply with, or participate in any program established under Federal law or under a State law that incorporates reference to Federal law, standards, or requirements.

Jobs Impact

The Department does not anticipate that the rules proposed for readoption with a new rule will result in the creation or loss of any jobs.

Agriculture Industry Impact

The Department does not anticipate that the rules proposed for readoption with a new rule will impact the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption with a new rule do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules apply to the Department notice requirements for rule proposals.

Housing Affordability Impact Analysis

The Department does not anticipate that the rules proposed for readoption with a new rule will have any impact on the average costs of housing or housing affordability. This notice of proposal addresses only the additional notice requirement for rule proposals and does not impact housing.

Smart Growth Development Impact Analysis

The Department does not anticipate that the rules proposed for readoption with a new rule will have any impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rulemaking addresses only additional notice requirement for rule proposals.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:2.

Full text of the proposed new rule follows:

SUBCHAPTER 4. PUBLIC NOTICE OF PROPOSED RULEMAKINGS

5:2-4.1 Public notice requirements

(a) When the Department publishes a notice of proposal in the New Jersey Register for public notice and comment, it shall give the following public notice on the notice of proposal:

1. Mailing or e-mailing it to interested persons, persons who have made timely requests for advance notice of Department rulemaking proceedings, and those on the Department's electronic mailing list;
2. Distributing it to the news media maintaining an office in the State House complex; and
3. Posting it on the Department's website, which publication shall satisfy the additional method of publicity requirement set forth in N.J.A.C. 1:30-5.2(a)6ii(4).

(a)

DIVISION OF CODES AND STANDARDS

Maintenance of Hotels and Multiple Dwellings

Proposed Amendments: N.J.A.C. 5:10-1.12 and 28.1

Proposed New Rule: N.J.A.C. 5:10-29

Authorized By: Charles A. Richman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 55:13A-6(e) and 2C:13-12 (P.L. 2013, c. 51).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-199.

Submit written comments by October 20, 2017, to:

Kathleen Asher
Department of Community Affairs
PO Box 800
Trenton, New Jersey 08625
Fax No. (609) 984-6696
kathleen.asher@dca.nj.gov

The agency proposal follows:

Summary

P.L. 2013, c. 51, which was enacted May 6, 2013, requires the training of designated hotel employees to recognize and to report suspected human trafficking. The Department of Community Affairs (Department) seeks to fulfill its responsibilities under this act by way of amendments to N.J.A.C. 5:10. N.J.A.C. 5:10-1.12 establishes the process and materials through which owners of hotels or multiple dwellings can obtain a certificate of inspection. The proposed amendment at N.J.A.C. 5:10-1.12 establishes that hotels are required to complete a form supplied by the Bureau of Housing Inspection that confirms all necessary employees have been trained through viewing the video to recognize and report suspected human trafficking.

New N.J.A.C. 5:10-29.1, Training on Recognizing and Reporting Suspected Human Trafficking, would specify the content of the training related to recognizing and reporting suspected human trafficking, and detail the hotel personnel required to participate, as well as the method through which the hotel owner will certify that the training has been completed. The proposed new rule also establishes that the hotel must post an informational sheet on reporting suspected human trafficking in conspicuous areas for easy visibility by hotel personnel. N.J.A.C. 5:10-29.1 is meant to facilitate the identification and reporting of suspected human trafficking.

N.J.A.C. 5:10-28.1, Carbon monoxide alarms, contains the requirements related to carbon monoxide detectors with a reference to the Uniform Construction Code (5:23). The applicable carbon monoxide standards previously at N.J.A.C. 5:23-3.20 were relocated to N.J.A.C. 5:23-3.14 in a previous adoption. The proposed amendment to this section updates the reference.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments to N.J.A.C. 5:10-1.12 and 28.1, and proposed new N.J.A.C. 5:10-29.1 would have a positive social impact by strengthening the systems in place to recognize and report suspected human trafficking by instituting specific training requirements for certain hotel employees, and by updating the reference standards relating to carbon monoxide detection systems. This amendment is not anticipated to have a negative social impact since the carbon monoxide standards previously at N.J.A.C. 5:23-3.20 were relocated to N.J.A.C. 5:23-3.14 in a previous adoption. By establishing such training requirements at hotels, perpetrators of human trafficking that use such venues will be more easily identified and brought to justice.

Economic Impact

Because the proposed amendments and new rule relate to the establishment of training requirements to be completed by hotel personnel with respect to recognizing and reporting suspected human trafficking through the use of a very short video available free of charge, and because the reference to the carbon monoxide detection standards is technical in nature, their adoption will have little to no economic impact on the owners of these properties.

Federal Standards Statement

No Federal standards analysis is required because these proposed amendments and new rule are not being proposed under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or any State statute that incorporates or refers to any Federal law, standard, or requirements.

Jobs Impact

Because the proposed amendments and new rule relate to the establishment of training requirements to be completed by hotel personnel with respect to recognizing and reporting suspected human trafficking, and because the reference to the carbon monoxide detection standards is technical in nature, their adoption will have no impact on the creation or loss of jobs.

Agriculture Industry Impact

The proposed amendments and new rule relate to the requirement to train relevant hotel personnel to recognize and report suspected human

trafficking and carbon monoxide detection standards. Therefore, the Department does not anticipate that the proposed amendments and new rule would impact the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments and new rule implement the training requirements for hotel personnel to recognize and report suspected human trafficking pursuant to P.L. 2013, c. 51. It is anticipated that certain “small businesses” as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., within the hotel industry will be required to abide by new recordkeeping, reporting, and compliance requirements. These additional requirements relate to the implementation of the applicable training procedures, posting of informational handouts, and the recording of training and certifying of the completion of training by relevant personnel. Because the act seeks to create awareness and reporting to address human trafficking, there is no basis for differential treatment of small businesses. The requirements are modest and through the establishment of training requirements for hotel personnel, perpetrators of human trafficking will be more easily identified and brought to justice. The proposed amendment relating to the reference to carbon monoxide detection standards will not affect small businesses.

Housing Affordability Impact Analysis

Because the proposed amendments and new rule relate to the establishment of training requirements to be completed by hotel personnel with respect to recognizing and reporting suspected human trafficking, and because the reference to the carbon monoxide detection standards is technical in nature, there is no anticipated impact on the affordability of housing or the average costs of housing.

Smart Growth Development Impact Analysis

The proposed amendments and new rule relate to the requirement to train relevant hotel personnel to recognize and report suspected human trafficking, and to the carbon monoxide detection standards. Therefore, the Department does not anticipate that the proposed amendments and new rule would have any impact upon housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. ADMINISTRATION AND ENFORCEMENT

5:10-1.12 Certificate of inspection

(a)-(c) (No change.)

(d) Every application for a certificate of inspection shall be signed by at least one individual owner or, in the case of a partnership, corporation or other entity, by a duly authorized representative of the owner, in which case the signer’s relationship to the owner shall be stated. The name of the person signing shall be printed or typed beneath the signature in a legible manner.

1. For hotels, the application shall include a certification on a form supplied by the Bureau that all employees required to be trained to recognize and to report suspected human trafficking, pursuant to N.J.A.C. 5:10-29.1, have viewed the informational video.

(e)-(h) (No change.)

SUBCHAPTER 28. CARBON MONOXIDE ALARMS

5:10-28.1 Carbon monoxide alarms

(a) Carbon monoxide alarms shall be installed and maintained in full operating condition in the following locations:

1. (No change.)

2. As an alternative to the requirements in (a)1 above, carbon monoxide alarms may be installed in the locations specified in the Uniform Construction Code (N.J.A.C. 5:23[-3.20]). A copy of the certificate of approval issued by the local construction code enforcing agency shall be provided to the Bureau at the time of installation, at or after the time of inspection, or at any other time, as proof of installation, in accordance with the Uniform Construction Code.

(b)-(c) (No change.)

SUBCHAPTER 29. HUMAN TRAFFICKING**5:10-29.1 Training on recognizing and reporting suspected human trafficking**

(a) All employees of hotels working in hotel management, at the front desk or in registration, in janitorial or housekeeping services, or in hotel security shall be required to view an informational video on recognizing and reporting suspected human trafficking, and to verify to the owner or agent of the hotel that they have done so.

1. The video is available in English and in Spanish on the Department's website at <http://nj.gov/dca/divisions/codes/resources/>.

2. A list of the names and positions of the current employees and the dates when the employee viewed the video shall be maintained with the hotel's records.

(b) The owner of a hotel or manager acting as agent of the owner, pursuant to N.J.A.C. 5:10-11.2 shall complete a certification on a form to be supplied by the Bureau attesting to the fact that all employees currently working in the areas listed in (a) above have viewed the informational video. The certification shall be submitted with the application for a certificate of inspection required pursuant to N.J.A.C. 5:10-1.12.

(c) An informational sheet on reporting suspected human trafficking, including the contact information for the Hotline, New Jersey Commission on Human Trafficking, or other applicable telephone number, shall be posted in conspicuous and visible locations in areas accessed by hotel employees, including, but not limited to, laundry rooms and employee break rooms. The poster, distributed by the New Jersey Office of the Attorney General, Division of Criminal Justice, Human Trafficking Task Force, is available in English on the Department's website at <http://nj.gov/dca/divisions/codes/resources/>.

(a)

**DIVISION OF LOCAL GOVERNMENT SERVICES
LOCAL FINANCE BOARD**

**Authorization for Compensated Absence Payments
Proposed Amendment: N.J.A.C. 5:30-15.4**

Authorized By: Local Finance Board, Timothy J. Cunningham,
Chair.

Authority: N.J.S.A. 52:27BB-10 and 52:27BB-28.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN 2017-190.

Please submit written comments on the proposal by October 20, 2017,
via e-mail to dlgs@dca.nj.gov or by regular mail to:

Patricia Parkin McNamara, Executive Secretary
Local Finance Board
Department of Community Affairs
PO Box 803
Trenton, NJ 08625-0803

For comments submitted via e-mail, please name the subject heading
"NJAC 5:30-15.4: Authorization for Compensated Absence Payments."

The agency proposal follows:

Summary

The Local Finance Board is proposing to amend N.J.A.C. 5:30-15.4 to craft reasonable and fiscally sustainable default limitations on local government payouts for accumulated absence liability, often colloquially known as "sick leave payouts." N.J.A.C. 5:30-15.4 permits municipalities, counties, and local government entities subject to the Local Authorities Fiscal Control Law, N.J.S.A. 40A:5A-1 et seq., to make payment to employees for the value of accumulated compensable absences that are authorized by collective negotiations (that is, labor agreement, local ordinance, enabling resolution, and/or an individual employment agreement where payouts for accumulated absences are authorized by local ordinance or enabling resolution. The proposed

amendment to N.J.A.C. 5:30-15.4(b) would require that, unless a labor agreement, local ordinance, enabling resolution, and/or an individual employment agreement authorized by local ordinance or enabling resolution expressly states otherwise, any absence time accumulated starting the effective date of this rule (or starting after expiration of an agreement in effect on the effective date of this rule) shall be compensable at no more than the base salary of the employee during the time the absence was accumulated. For example, if an employee accumulated 10 sick days in Year 1 during which his or her base salary was \$75,000, and maintained those days into Year 10 when the employee's base salary was \$125,000, the value of those 10 sick days would be calculated based on the lower \$75,000 amount unless expressly stated otherwise. Chief financial officers would be responsible for ensuring documentation of the employee's base salary at the time in which the absence time was accumulated.

Further, unless a lawful agreement or local policy expressly states otherwise, absence time accumulated after the effective date of this rule (or after expiration of an agreement in effect on the effective date of this amendment) that is utilized during employment shall be utilized in the order of highest dollar value to lowest dollar value. To use another example, if an employee earned a base salary of \$50,000 in Year 1, \$60,000 in Year 2 and accumulated 10 sick leave days in each of those two years, the employee would utilize the Year 2 sick days first given their higher dollar value. If a local unit places a cap on the total dollar amount of compensable absence, compensable absence shall be exhausted before non-compensable absence is utilized. Non-compensable absence time would begin to be utilized only once all compensable absence time has been utilized.

Generally, N.J.A.C. 5:30-15.4 requires the chief financial officer to certify to the local unit's governing body that sufficient documentation of the amount of the accumulated absence has been provided. Sufficient documentation shall include a copy of, or reference to, the agreement authorizing compensation, documentation of the amount of accumulated absence time, and the total value of the compensation due based on the agreement and accumulated absence time. However, even in the absence of sufficient documentation, subsection (c) provides two scenarios through which local units can nevertheless pay employees for compensable accumulated absences. The first scenario involves the employee providing the governing body with a certification that includes an annual itemization of each type of accumulated absence, records maintained by the employee or employer to substantiate the absence, and an explanation as to the reasons that sufficient documentation is unavailable; where appropriate, the governing body is expected to supplement the employee's records if possible.

Alternatively, paragraph (c)2 allows the local unit to make payment even if the employee is unable to produce all of the necessary documentation referenced above. The governing body may, by resolution, approve payment for compensated absence based upon the employee's ability to provide partial documentation, and upon finding that there is good and reasonable cause to warrant payment in the absence of full documentation. Such good and reasonable cause may be in connection with the loss of relevant information due to technological changes in recordkeeping; the loss of data caused by fire, natural disaster and the like; the loss of dated information; or other reasonable explanation by the employee as to why sufficient documentation is not available. The Local Finance Board is proposing to limit the application of the "partial documentation" option set forth in paragraph (c)2 to absence time accumulated before the effective date of this amendment or before the expiration of an agreement in effect as of the effective date of this amendment. The Board finds that continuing to allow compensation for accumulated absences that are supported by incomplete documentation creates an undue risk of waste, fraud, and abuse. Merely requiring a governing body finding of "good and reasonable cause" in the face of a "reasonable explanation by the employee as to the unavailability of sufficient documentation" provides insufficient protection to taxpayers. Employees should be required to bear the burden of creating and maintaining thorough backup documentation of accumulated compensable absence time, so in the event that the local unit does not possess sufficient supporting documentation, the employee