

## **N.J.A.C. 5:37-5.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 56 No. 13, July 1, 2024

***NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 37. MUNICIPAL, COUNTY AND AUTHORITY EMPLOYEES DEFERRED COMPENSATION PLANS > SUBCHAPTER 5. THE EMPLOYER***

### **§ 5:37-5.1 Institution of plans**

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- (a) The employer shall decide whether to institute a deferred compensation plan for its employees.
- (b) An employer may at its option exclude certain classes or types of employees from participation in the plan.

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## [N.J.A.C. 5:37-5.2](#)

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### **§ 5:37-5.2. Plan and service agreement adoption**

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(a) The employer shall adopt a self-administered plan by resolution. A certified copy of the resolution shall be forwarded to the Director. The resolution shall include, but shall not be limited to:

1. Formal adoption of the plan; and
2. Identification of a plan manager pursuant to [N.J.A.C. 5:37-5.4](#).

(b) The employer shall adopt a prototypical plan by resolution of the governing body. The resolution shall include, but not be limited to:

1. A formal adoption of the plan;
2. A description of the method used to solicit proposals pursuant to [N.J.A.C. 5:37-7.1](#);
3. An identification of a local plan administrator pursuant to [N.J.A.C. 5:37-5.4](#);
4. An authorization to execute a service agreement with the contractor;
5. A statement of non-collusion pursuant to [N.J.A.C. 5:37-5.7](#);
6. Certification of plan compliance with the rules of the Internal Revenue Service pursuant to [N.J.A.C. 5:37-3.4](#) or [3.5](#) for a prototypical plan adoption only; and
7. The identification of the contractor, the plan identifier and the service agreement identifier.

(c) The Director shall make available a sample resolution for use by employers.

(d) A certified copy of the resolution shall be forwarded to the Director.

### **History**

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#### **HISTORY:**

Amended by R.1999 d.58, effective March 1, 1999.

See: [30 New Jersey Register 3989\(a\)](#), [31 New Jersey Register 673\(b\)](#).

In (a), added a third sentence in the introductory paragraph, and added 1 and 2.

Amended by R.2005 d.349, effective October 17, 2005.

See: [37 New Jersey Register 1278\(a\)](#), [37 New Jersey Register 3975\(b\)](#).

In (b)7, substituted ", " for "and" and "identifier and the" for "or".

§ 5:37-5.2. Plan and service agreement adoption

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## **N.J.A.C. 5:37-5.3**

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### **§ 5:37-5.3 (Reserved)**

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### **History**

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#### **HISTORY:**

Amended by R.1997 d.371, effective September 2, 1997.

See [29 N.J.R. 2743\(a\)](#), [29 N.J.R. 3805\(a\)](#).

In (a), substituted "deferred compensation plan which has been approved by the Director" for "prototypical plan".

Repealed by R.2007 d.214, effective July 16, 2007.

See: [39 N.J.R. 819\(a\)](#), [39 N.J.R. 2631\(a\)](#).

Section was "Additional service agreement(s)".

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## **N.J.A.C. 5:37-5.4**

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### **§ 5:37-5.4 Responsible for administration**

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The employer shall ensure the sound and proper administration of the plan, which shall include, but not be limited to, the proper, accurate and adequate accounting and reporting of all funds by appointing a local plan administrator for a prototypical plan or a plan manager for a self-administered plan by resolution.

### **History**

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#### **HISTORY:**

Amended by R.1999 d.58, effective March 1, 1999.

See: [30 New Jersey Register 3989\(a\)](#), [31 New Jersey Register 673\(b\)](#).

Substituted "local plan administrator for a prototypical plan or a plan manager for a self-administered plan" for "plan administrator" following "appointing a".

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## **N.J.A.C. 5:37-5.5**

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### **§ 5:37-5.5 Exclusive benefit**

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(a) For all plans adopted on or after August 20, 1996, all moneys deferred and any other assets or income of the plan shall be held in trust, or one or more annuity contracts or one or more custodial accounts for the exclusive benefit of the participating employers and their beneficiaries.

(b) An employer with a plan approved prior to August 20, 1996 shall have until January 1, 1999 to amend the plan to have all of the moneys deferred and any other assets or income of the plan funds held in trust, or one or more annuity contracts or one or more custodial accounts for the exclusive benefit of the participating employees and their beneficiaries. Until the plan is amended, the moneys deferred shall be subject to the employer's general creditors.

### **History**

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#### **HISTORY:**

Repeal and New Rule, R.1997 d.371, effective September 2, 1997.

See: [29 New Jersey Register 2743\(a\)](#), [29 New Jersey Register 3805\(a\)](#).

Section was "Employer retaining assets".

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## **N.J.A.C. 5:37-5.6**

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### **§ 5:37-5.6 Conflict of interest**

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In undertaking any activities related to the establishment or administration of a deferred compensation plan, including but not limited to, any activities related to contracting for the administration of such a plan, local government officers and employees shall be governed by and subject to the requirements of the Local Government Ethics Law, [N.J.S.A. 40A:9-22.1](#) et seq., and any county or municipal code of ethics promulgated pursuant thereto.

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## **N.J.A.C. 5:37-5.7**

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### **§ 5:37-5.7 Non-collusion**

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There shall be no collusion, or evidence or appearance of collusion, between any official or employee of the employer and any official or employee or representative of the contractor, vendor, insurance company, bank, consultant, brokerage firm, or any other profit making or non-profit firm in solicitation or award of a service agreement with the employer. The employer shall so certify to the Director in the resolution implementing each service agreement.

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## **N.J.A.C. 5:37-5.8**

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### **§ 5:37-5.8 No personal liability**

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The employer or contractor shall not be held personally liable for any returns on investment of plan funds which are less than any participant or group of participants expected. The employer shall require a hold harmless provision in service agreements with contractors which includes an indemnification of the employer from any cause of action, together with the reasonable costs of litigation from acts or omissions by the contractor.

### **History**

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#### **HISTORY:**

Amended by R.1999 d.58, effective March 1, 1999.

See: [30 New Jersey Register 3989\(a\)](#), [31 New Jersey Register 673\(b\)](#).

Substituted a reference to contractors for a reference to administrators in the first sentence.

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## **N.J.A.C. 5:37-5.9**

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### **§ 5:37-5.9 Administrative expenses**

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The employer may charge the plan fund for reasonable administrative expenses in an amount agreed upon between the employer and the employees.

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## **N.J.A.C. 5:37-5.10**

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### **§ 5:37-5.10 Minimum amounts**

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The employer shall establish minimum deferral amounts.

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## **N.J.A.C. 5:37-5.11**

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### **§ 5:37-5.11 Terminated plan or service agreement**

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When an employer terminates a plan or a service agreement with a contractor or plan, such action shall be by resolution. The resolution shall include the name of the contractor and the plan or service agreement identifier. A copy of the resolution shall be filed with the Director.

### **History**

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#### **HISTORY:**

Amended by R.1999 d.58, effective March 1, 1999.

See: [30 New Jersey Register 3989\(a\)](#), [31 New Jersey Register 673\(b\)](#).

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