58 N.J.R. 2252(a)

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RULE ADOPTIONS

Reporter
58 N.J.R. 2252(a)

Agency

LABOR AND WORKFORCE DEVELOPMENT > DIVISION OF WAGE AND HOUR COMPLIANCE

Administrative Code Citation

Adopted New Rules: N.J.A.C. 12:73

Adopted Amendment: N.J.A.C. 12:56-3.6

Text

Domestic Workers

Proposed: September 2, 2025, at 57 N.J.R. 1915(a).

Adopted: August 31, 2026 by Kevin D. Jarvis, Acting Commissioner, Department of Labor and Workforce Development.

Filed: August 31, 2026, as R.2026 d.109, **with non-substantial changes**

not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-20, 34:1A-3.e, and 34:11-78.

Effective Date: October 5, 2026.

Expiration Dates: May 19, 2032, N.J.A.C. 12:56; and

August 31, 2033, N.J.A.C. 12:73.

Summary of Public Comments and Agency Responses:

Written comments were submitted to the Department of Labor and Workforce Development (Department) by the following individuals:

1. Carole Apkarian, 2nd Family.

2. Sophia Balemian-Spencer, Esq., National Domestic Workers Alliance.

3. Frank Brady, Center for Hope Hospice & Palliative Care.

4. Trisha Cavagnaro, Care Options for Kids.

5. Frank Esposito, Expert Home Care.

6. Douglas Feltman, Home Helpers.

7. Nancy Fitterer, Home Care & Hospice Association of NJ.

8. Karla Gambrill, Hunterdon Health.

9. Teri L. Henning, Aveanna Healthcare.

10. Dolly Hernandez, Casa Freehold.

11. Ann Johnson, BAYADA Home Health Care.

12. Ethan Kassel.

13. Tsering D. Lama, Adhikaar for Human Rights and Social Justice.

14. Patty Laychock, Visiting Angels.

15. Jason Lee, Home Care Association of America.

16. Logan Lee, Home Care & Hospice Association of NJ.

17. Michael Mahgerefteh, Promise Care.

18. Jackie Major, Right at Home.

19. Jesse Malik, Visiting Angels of Wayne.

20. Diana Mejia, Wind of the Spirit.

21. Lisa Pellegrino.

22. Alex Pfeiffer, Open Systems Healthcare.

23. Mable Philip, Synergy HomeCare.

24. Jean Public.

25. John Redmond, Aquinas Healthcare.

26. Eric M. Reinarman, Esq., Home Care Association of America.

27. Christopher Rinn, VNA Health Group.

28. Lisa Rodriguez, Towne Home Care.

29. Teresa Sajkowski, Always Responsive Home Care.

30. Doreen Schmitt, Ascend HomeHealth.

31. Eydie Shapiro, Comfort Keepers of Secaucus & Nutley.

32. Brendan Sullivan, Boardwalk Homecare, Inc.

33. Andrea Sussman, New Jersey Chapter of the Home Care Association of America.

34. Keith Talbot and Sarah Hymowitz, Legal Services of New Jersey.

1. COMMENT: Commenters maintain that certified home health aides who are employed by licensed health care service firms, "should not be included as domestic workers under the Domestic Workers' Bill of Rights," adding, "[t]he intent of the law was to protect individual household employees, not regulated health care workers employed by licensed health care service firms." The commenters assert that health care service firms "are already governed by extensive licensing, accreditation, and wage/hour requirements that ensure worker protections." Therefore, the commenters ask that the Department "please carve out employees who work for licensed health care service firms from the Domestic Workers' Bill of Rights."

RESPONSE: The definition for the term "domestic worker" codified at new N.J.A.C. 12:73-2.1 is taken verbatim from the Domestic Workers' Bill of Rights; specifically, N.J.S.A. 34:11-70, which states that a "domestic worker" means "hourly and salaried employees, full-time and part-time individuals, and temporary individuals and is narrowly construed to mean any worker who: (1) works for one or more employers; and (2) is an individual who works in residence for the purposes of providing any of the following services: caring for a child; serving as a companion or caretaker for a sick, convalescing, or elderly person or a person with a disability; housekeeping or house cleaning; cooking; providing food or butler service; parking cars; cleaning laundry; gardening; personal organizing; or for any other domestic service purpose." N.J.S.A. 34:11-70 also includes a list of exclusions from the definition of "domestic worker" for the purpose of determining coverage pursuant to the Domestic Workers' Bill of Rights; namely, when the domestic worker is: (1) a family member; (2) an individual primarily engaged in house sitting, pet sitting, or dog walking; (3) an individual working at a business operated primarily out of the residence, such as a home day-care business; (4) an individual whose primary work involves household repair or maintenance, such as a roofer, plumber, mason, painter or other similar contractor; (5) an employee of the State or the United States; or (6) an individual established as a kinship legal guardian, as defined at N.J.S.A. 3B:12A-2, of a child who lives in the residence or an individual who participates in the Kinship Navigator Program, as authorized by the Department of Children and Families, as a caregiver of a child who lives in the residence and receives services provided by a kinship navigator service provider. Nowhere within the statute are home health aides employed by licensed health care service firms excluded from the definition of "domestic worker." The Department has no discretion to deviate from the definition of "domestic worker," and the resulting scope of coverage pursuant to the Domestic Workers' Bill of Rights, in the statute.

2. COMMENT: Commenters who operate licensed health care service firms indicate that they are particularly concerned about "the requirement [within the new rules] that employers obtain a signed written contract at the start of each work week," which they assert, "is impractical and burdensome for health care service firms." The commenters urge the Department to "[e]liminate the weekly written contract requirement for licensed agencies already governed by comprehensive state and federal labor and accreditation standards."

RESPONSE: The new rules do not require that employers obtain a signed written contract at the start of each week. Rather, new N.J.A.C. 12:73-3.1(a) requires that "[p]rior to the commencement of employment, each employer of a domestic worker shall draft and offer to the domestic worker, a written contract of employment …" Thus, an employer need only draft and offer to the domestic worker a single contract at the start of employment.

3. COMMENT: Commenters appreciate the Department's recognition within new N.J.A.C. 12:73-3.1(a)3i and 3.1(a)4i that "the Domestic Workers' Bill of Rights does not require execution of a new contract every week …" adding, "[i]nstead, the rule appropriately allows employers to include a provision in the written contract acknowledging that wages or schedules may vary, so long as notice [of wages and schedules] is provided before the start of each workweek." However, the commenters request that the term "notice" be defined in such a way as to permit electronic notice by, for example, email, text message, or scheduling software notification.

RESPONSE: The Department acknowledges that the clarification requested by the commenter regarding permissible forms of notification is reasonable. Therefore, the Department is adding new N.J.A.C. 12:73-1.8, which states that whenever within the rules an employer or hiring entity is required to "notify" or provide "notification" to a domestic worker, it shall be permissible for the employer to provide that notification in writing or through electronic means. This change on adoption does not enlarge or curtail who and what will be affected by the proposed [page=2253] rulemaking; it does not alter what is being prescribed, proscribed, or otherwise mandated by the rulemaking; nor does it enlarge or curtail the scope of the proposed rulemaking and its burden on those affected by it. Thus, it is a non-substantial change, which may be made upon adoption.

4. COMMENT: The commenter states that, "[t]he regulations should make clear that requesting a written contract is a protected right and that employers may not retaliate against workers for doing so."

RESPONSE: New N.J.A.C. 12:73-3.1(a) imposes an affirmative obligation on each employer of a domestic worker to "draft and offer to the domestic worker a written contract of employment." New N.J.A.C. 12:73-1.2 expressly prohibits retaliation through discharge, or in any other manner, against a domestic worker for exercising any rights granted pursuant to the Domestic Workers' Bill of Rights or N.J.A.C. 12:73, including, but not limited to, complaining to the employer that the domestic worker's rights pursuant to the law or rules have been violated. This would include where a domestic worker requests a written contract that has not already been provided (as required by law and rule) and then suffers retaliation for having made such a request. No change in the new rules is necessary.

5. COMMENT: The commenter states, "it is important that the regulations prohibit deductions unless a worker agrees to them."

6. COMMENT: The commenter acknowledges that new N.J.A.C. 12:73-3.1(a)10 requires the written contract to specify the value of any housing provided to the domestic worker, but adds, "[t]his could let employers take money out of your paycheck for housing by claiming it has a high value."

RESPONSE TO COMMENTS 5 AND 6: N.J.S.A. 34:11-4.4 and N.J.A.C. 12:55-2.1 already prohibit deductions by an employer from the wages of any employee, including a domestic worker, for any reason or pursuant to any circumstances other than those expressly enumerated in the law and rules. Neither the law, nor the Departmental rules permit deductions from an employee's wages for housing costs, even with the employee's consent.

7. COMMENT: The commenter suggests that, "the regulations [should] provide stronger requirements for employers using 'significant misconduct' for firing a worker without notice."

RESPONSE: New N.J.A.C. 12:73-5.1(c) exempts an employer from the notification requirement when terminating the employment of a domestic worker where the employer has "a good faith belief, and without reckless disregard or willful ignorance of the truth, that the domestic worker has engaged in significant misconduct," and it defines "significant misconduct" to mean that the domestic worker, "abused, neglected, or caused any other harmful conduct against the employer, members of the employer's family, or individuals residing in the employer's household." Both the exemption from the notification requirement and the definition of "significant misconduct" are taken verbatim from N.J.S.A. 34:11-74.e. The Department has no discretion to deviate from the statute.

8. COMMENT: The commenter suggests that, "[t]he regulations should explicitly prohibit retaliation based on immigration status."

RESPONSE: The purpose of the new rules is to implement the Domestic Workers' Bill of Rights, N.J.S.A. 34:11-69 et seq. Nowhere in the Domestic Workers' Bill of Rights does it prohibit retaliation based on immigration status. Rather, N.J.S.A. 34:11-77.d prohibits retaliation because a domestic worker has exercised rights or pursued a claim for a violation of the Domestic Workers' Bill of Rights, which rights the law indicates "include the right to demand compliance with protections established by written agreement; the right to file a complaint or inform any person about an employer's alleged violation of the Domestic Workers' Bill of Rights; the right to cooperate with the Department in any investigation pursuant to the Dometic Worker's Bill of Rights; and the right to inform any person of the rights established under the Domestic Workers' Bill of Rights." The Department may not exceed its statutory authority by expanding the causes for retaliation that are enumerated in the law.

9. COMMENT: The commenter suggests that new N.J.A.C. 12:73-4.4, Live-in domestic worker; 24-hour period of rest, should "make sure the day is real time off, and workers cannot be expected to work if it is considered time off."

RESPONSE: New N.J.A.C. 12:73-4.4(b) already states that "[d]uring the 24-hour rest provided to the live-in domestic worker pursuant to (a) above, the live-in domestic worker **shall be both relieved of all work duties and permitted to leave the work site**." (emphasis added) This is precisely the clarification that the commenter is requesting. Consequently, no change is needed.

10. COMMENT: The commenter observes that among the criteria set forth at new N.J.A.C. 12:73-1.3 for use by the Department when determining the appropriate penalty to assess against a hiring entity that has violated the Domestic Workers' Bill of Rights, is "[t]he good faith of the hiring entity," along with the seriousness of the violation(s), the past history of violations by the hiring entity, the size of the hiring entity's business, and any other factors that the Commissioner deems appropriate. The commenter recommends that the Department "define objective criteria" for assessing the "good faith" of the hiring entity, adding that failing to do so would create a risk of "inconsistent application that could weaken deterrence."

RESPONSE: The criteria for assessing the appropriate penalty pursuant to new N.J.A.C. 12:73-1.3 for violations of the Domestic Workers' Bill of Rights, is identical to the criteria set forth at N.J.A.C. 12:55-1.6(c) for assessing the appropriate penalty for violations of the Wage Payment Law; the criteria set forth at N.J.A.C. 12:56-1.3(c) for assessing the appropriate penalty for violations of the Wage and Hour Law; the criteria set forth at N.J.A.C. 12:60-8.3(c) for assessing the appropriate penalty for violations of the Prevailing Wage Act; the criteria set forth at N.J.A.C. 12:64-4.2(c) for assessing the appropriate penalty for violations of the Public Works Contractor Registration Act; the criteria set forth at N.J.A.C. 12:69-1.3(c) for assessing the appropriate penalty for violations of the Earned Sick Leave Law; the criteria set forth at N.J.A.C. 12:71-3.1(e) for assessing the appropriate penalty for violations of the New Jersey Call Center Jobs Act; and the criteria set forth at N.J.A.C. 12:72-1.3(i) for assessing the appropriate penalty for violations of the Temporary Workers' Bill of Rights. The Department has experienced no difficulties in applying these criteria, including the "good faith" of the employer, to determine the appropriate penalty for violations of these many laws that the Department has enforced for decades. The Department prefers to maintain consistency, where possible, among its rules. Consequently, no change will be made upon adoption.

11. COMMENT: The commenter suggests that the Department should "strengthen the effect of 'presumed damages,'" by requiring "that the claimant should be paid any presumed damages that are awarded first, before the NJDOL recovers any administrative penalty from the employer." The commenter also recommends that rather than allow for the award of presumed damages "at the discretion of the Commissioner," they should be awarded "when a violation of a specific provisions of the Domestic Workers' Bill of Rights has been proven."

RESPONSE: N.J.S.A. 34:11-79.f states that "remedies" awarded by the Department for violations of the Domestic Workers' Bill of Rights "may" include presumed damages. This statutory language is permissive, leaving the determination of whether to award presumed damages and the amount of those presumed damages to the discretion of the Department. The Department believes that new N.J.A.C. 12:73-1.4(d) is consistent with the statute. Regarding the commenter's suggestion about the order that presumed damages are collected relative to the collection of administrative penalties, there is nothing in Department's rules pursuant to the Wage Payment Law, Wage and Hour Law, or other laws that the Department enforces, expressly requiring that unpaid wages or other such remedies to the worker should be paid before the payment of administrative penalties. The Department traditionally pursues remedies to the worker and administrative penalties simultaneously. The Department would prefer not to deviate from that approach here.

12. COMMENT: The commenter suggests that the new rules should impose liquidated damages for violations of the Domestic Workers' Bill of Rights, adding "[i]n other similar contexts, New Jersey **law** provides for liquidated damages" (emphasis added).

RESPONSE: Indeed, other laws do impose liquidated damages, but the Domestic Workers' Bill of Rights does not. The Department is not empowered to order the payment of liquidated damages for violations of the Domestic Workers' Bill of Rights where it has no statutory authority to do so.

[page=2254] 13. COMMENT: The commenter suggests that the Department replace "and" with "or" in the definition of the term "hiring entity" between the words "person" and "persons."

RESPONSE: The definition for the term "hiring entity" at new N.J.A.C. 12:73-2.1 already has an "or" between the words "person" and "persons."

14. COMMENT: The commenter takes issue with new N.J.A.C. 12:73-7.1, which requires that, for each domestic worker employed by a hiring entity, the employer hiring entity shall maintain records regarding hours worked, rate(s) of pay, etc., for a period of no less than two years, suggesting that instead the rule should require that those records be maintained by the employer hiring entity for six years.

RESPONSE: As the statute of limitations to file a claim pursuant to the Domestic Workers' Bill of Rights is two years, it follows that the recordkeeping requirement for employers should also be for a period of two years.

15. COMMENT: The commenter takes issue with the standard for determining whether two or more employers of the same employee are "joint employers," suggesting that rather than use the standard set forth at new N.J.A.C. 12:73-8.1, the Department should use the "ABC test" for independent contractor status set forth within the New Jersey Unemployment Compensation Law.

RESPONSE: The ABC test is a test for independent contractor status. What is at issue pursuant to new N.J.A.C. 12:73-8.1 is not whether the domestic worker is an employee or an independent contractor, but, rather, whether multiple employers of the same employee are joint employers. The criteria set forth at new N.J.A.C. 12:73-8.1 for determining whether two employers are joint employers of the same employee is the appropriate test. No change will be made upon adoption.

16. COMMENT: The commenter states that the Department "should make clear under the regulation, which earned sick leave rights apply to domestic workers," adding that "[t]he exclusion of per diem health care workers is a limited subset of domestic workers."

RESPONSE: The Domestic Workers' Bill of Rights makes no mention of the Earned Sick Leave Law and the Department already has rules at N.J.A.C. 12:69 to implement the Earned Sick Leave Law. No change will be made upon adoption.

17. COMMENT: The commenter objects to the requirement that documents be provided to domestic workers in any language other than English. The commenter also objects to the notice that must be provided to domestic workers in the event that their employment is terminated. Finally, the commenter objects to what she refers to as "over government," adding that "the regulations are out of control … living here is a dictatorship."

RESPONSE: The requirement that the written employment contract be provided in English and such other language as may be preferred by the domestic worker is a statutory requirement, as are the requirements regarding advance notice of termination. The Department has no discretion to deviate from these statutory mandates.

Federal Standards Statement

The adopted new rules do not exceed standards or requirements imposed by Federal law. That is, there are currently no Federal standards or requirements relating to a domestic worker's written employment contract, meal or rest periods for domestic workers, notification of the termination of a domestic worker's employment, or the various domestic worker privacy concerns that are addressed in the Act (and repeated verbatim within the adopted new rules). As there are currently no such Federal standards or requirements, no Federal standards analysis is required relative to the adopted new rules.

Regarding the single adopted amendment at N.J.A.C. 12:56-3.6, which would delete the exemption from the minimum wage requirement for part-time employees primarily engaged in the care and tending of children in the home of the employer, as explained in the Summary above, this amendment is necessary to ensure consistency with N.J.S.A. 34:11-56a4, as amended by P.L. 2023, c. 262. Pursuant to the Federal Fair Labor Standards Act

(FLSA), 29 U.S.C. 201 et seq., there is an exemption from the ***Federal minimum wage requirement*** for "any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves." 29 U.S.C. 213(a)(15). With the amendment to N.J.S.A. 34:11-56a4 resulting from P.L. 2023, c. 262, and the corresponding adopted amendment to N.J.A.C. 12:56-3.6, there is no longer an exemption from the ***State's minimum wage requirement*** for "part-time employees primarily engaged in the care and tending of children in the home of the employer." To the extent that there is overlap between those "employed on a casual basis in domestic service employment to provide babysitting services" and "part-time employees primarily engaged in the care and tending of children in the home of the employer," the adopted amendment at N.J.A.C. 12:56-3.6 will result in a set of workers being covered by the ***State's minimum wage requirement*** who are currently exempt from the ***Federal minimum wage requirement*** pursuant to the FLSA. However, as mentioned earlier, the adopted amendment to N.J.A.C. 12:56-3.6 is taken verbatim from P.L. 2023, c. 262, which amends N.J.S.A. 34:11-56a4, the State's minimum wage law. As the Department has no discretion to deviate from this express statutory mandate, a Federal standards analysis is not required.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***):

CHAPTER 56

WAGE AND HOUR

SUBCHAPTER 3. MINIMUM WAGE RATES

12:56-3.6 Exemptions from the statutory minimum wage rates

(a) Employees in the following occupations shall be exempt from the statutory minimum wage rates:

1.-3. (No change.)

Recodify existing 5.-6. as 4.-5. (No change in text.)

CHAPTER 73

DOMESTIC WORKERS

SUBCHAPTER 1. GENERAL PROVISIONS

12:73-1.1 Purpose

The purpose of this chapter is to implement N.J.S.A. 34:11-69 through 79 (the Act), which sets forth workplace protections, as well as hiring entity responsibilities, that are enforced by the Department of Labor and Workforce Development for the benefit of domestic workers.

12:73-1.2 Retaliation prohibited

(a) No hiring entity shall retaliate through discharge, or in any other manner, against a domestic worker for exercising any rights granted the domestic worker pursuant to the Act or this chapter, including, but not limited to, the following:

1. Making a complaint to a hiring entity, to a co-worker, to a community organization, before a public hearing, or to a State or Federal agency that rights guaranteed pursuant to the Act or this chapter have been violated;

2. Instituting any proceeding pursuant to, or related to, the Act or this chapter; or

3. Testifying, or preparing to testify, in an investigation or proceeding pursuant to the Act or this chapter.

(b) When, within 90 days of the domestic worker's exercise of rights protected pursuant to the Act or this chapter, a hiring entity takes any adverse action against the domestic worker, there shall arise a rebuttable presumption that the adverse action was in retaliation for the domestic worker's exercise of rights.

(c) In the case of temporary or seasonal employment that ends within 90 days of the domestic worker's exercise of rights protected pursuant to the Act or this chapter, the rebuttable presumption of retaliation at (b) above shall also arise if the employer hiring entity fails to rehire the domestic worker at the next opportunity for work in the same position.

(d) No hiring entity shall communicate to a domestic worker exercising the domestic worker's rights pursuant to the Act, the willingness or intent to contact, report to, or to make an implied or express assertion to report to a government agency regarding the suspected citizenship or [page=2255] immigration status of a domestic worker or family member of a domestic worker, because the domestic worker has, or has expressed an intent to, exercise rights protected pursuant to the Act or this chapter or because of a belief that the domestic worker may do so.

12:73-1.3 Administrative penalties

(a) As an alternative or in addition to any other sanction provided for in the Act or this chapter, when the Commissioner finds that a hiring entity has violated the Act, the Commissioner is authorized to assess and collect an administrative penalty in the amounts that follow:

1. First violation—not more than $ 250.00; and

2. Second and subsequent violations—not less than $ 25.00 nor more than $ 500.00.

(b) In assessing an administrative penalty pursuant to this section, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violation(s):

1. The seriousness of the violation(s);

2. The past history of previous violations by the hiring entity;

3. The good faith of the hiring entity;

4. The size of the hiring entity's business; and

5. Any other factors that the Commissioner deems appropriate.

(c) No administrative penalty shall be levied pursuant to this section unless the Commissioner provides the alleged violator with written notification of the violation and the amount of the penalty and an opportunity to request a formal hearing pursuant to N.J.A.C. 12:73-1.5.

12:73-1.4 Remedies

(a) As an alternative to, or in addition to, any other sanction provided for in the Act or this chapter, when the Commissioner finds that an employer hiring entity has violated the Act or this chapter, the Commissioner shall be authorized, where appropriate, to order reinstatement of the domestic worker and back pay for lost wages and benefits.

(b) As an alternative to, or in addition to, any other sanction provided for in the Act or this chapter, when the Commissioner finds that an employer hiring entity has violated any of the requirements set forth at N.J.A.C. 12:73-4, Meal and Rest Periods, the Commissioner is authorized to order payment by the employer hiring entity to the domestic worker of an amount equal to between one hour and two hours of pay at the domestic worker's regular rate of pay, for each workday that the violation occurred.

1. For a first violation of any of the requirements set forth at N.J.A.C. 12:73-4, Meal and Rest Periods, the employer hiring entity shall be ordered to pay the domestic worker an amount equal to one hour of pay at the domestic worker's regular rate of pay; and

2. For the second and each subsequent violation of any of the requirements set forth at N.J.A.C. 12:73-4, Meal and Rest Periods, the employer hiring entity shall be ordered to pay the domestic worker an amount equal to two hours of pay at the domestic worker's regular rate of pay.

(c) As an alternative to, or in addition to, any other sanction provided for in the Act or this chapter, when the Commissioner finds that an employer hiring entity has failed to provide the notice of termination of employment required pursuant to N.J.A.C. 12:73-5.1, the Commissioner is authorized to order payment by the employer hiring entity to the domestic worker of an amount equal to one day of wages at the domestic worker's regular hourly rate of pay for each day that the notification was deficient.

(d) As an alternative to, or in addition to, any other sanction provided for in the Act or this chapter, when the Commissioner finds that a hiring entity has violated a provision of the Act or this chapter for which none of the remedies listed at (a), (b), or (c) above is an appropriate remedy, the Commissioner shall be authorized to order payment by the hiring entity to the domestic worker of the following presumed damages:

1. First violation—not more than $ 250.00; and

2. Second and subsequent violations—not less than $ 25.00 nor more than $ 500.00.

(e) In assessing presumed damages pursuant to (d) above, the Commissioner shall consider the following factors, where applicable, in determining what constitutes appropriate presumed damages for the particular violation(s):

1. The seriousness of the violation(s);

2. The past history of previous violations by the hiring entity;

3. The good faith of the hiring entity;

4. The size of the hiring entity's business; and

5. Any other factors that the Commissioner deems appropriate.

(f) No remedy shall be final pursuant to this section unless the Commissioner provides the alleged violator with written notification of the violation and the remedy ordered and an opportunity to request a formal hearing pursuant to N.J.A.C. 12:73-1.5.

12:73-1.5 Hearings

(a) When the Commissioner assesses an administrative penalty pursuant to N.J.A.C. 12:73-1.3 or orders a remedy pursuant to N.J.A.C. 12:73-1.4, the hiring entity against which the administrative penalty has been assessed or remedy ordered shall have the right to a hearing pursuant to (b) below.

(b) No administrative penalty shall be levied pursuant to N.J.A.C. 12:73-1.3, nor shall any remedy become final pursuant to N.J.A.C. 12:73-1.4, unless the Commissioner provides the alleged violator with written notification of the violation and the amount of the penalty and/or amount or type of remedy and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following receipt of the notice. All hearings shall be held pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

(c) All requests for hearings will be reviewed by the Division to determine if the dispute may be resolved at an informal settlement conference. If, following its review, the Division determines that an informal settlement

conference is warranted, such a conference shall be scheduled. If a settlement cannot be reached, the case will be forwarded to the Office of Administrative Law for a formal hearing.

(d) The Commissioner shall make the final decision of the Department.

(e) If the hiring entity fails to request a formal hearing within 15 days following receipt of the notice, the notice shall become a final order.

(f) Appeals of the final decision of the Commissioner pursuant to (d) above, or a final order pursuant to (e) above, shall be made to the Appellate Division of the New Jersey Superior Court.

12:73-1.6 Processing of complaints

Any complaint filed with the Division that alleges a violation of the Act or this chapter shall be processed in the same manner as a complaint filed with the Division pursuant to the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a et seq., and the rules promulgated thereunder.

12:73-1.7 Notification of rights of domestic workers

(a) A hiring entity shall provide to each domestic worker that it employs or engages to work, notification of the rights of domestic workers pursuant to the Act and this chapter, and information on how to file a complaint for a violation of the rights of domestic workers pursuant to the Act and this chapter.

(b) The form of the notification pursuant to (a) above shall be made available by the Commissioner to hiring entities on the Department's internet website.

***12:73-1.8 Form of notification**

Whenever within this chapter an employer or hiring entity is required to "notify" or provide "notification" to a domestic worker, it shall be permissible for the employer to provide that notification through either written or electronic means.*

SUBCHAPTER 2. DEFINITIONS

12:73-2.1 Definitions

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

"Act" means N.J.S.A. 34:11-69 through 79.

"Benefits" means employee fringe benefits, including, but not limited to, health insurance, life insurance, disability insurance, paid time off (including vacation, holidays, personal leave, and sick leave), training, and pension.

"Casual work" means work that is:

1. Irregular, uncertain, or incidental in nature and duration; and

[page=2256] 2. Different in nature from the type of work in which the worker is customarily engaged.

"Commissioner" means the Commissioner of the Department of Labor and Workforce Development, or his or her designee.

"Department" means the Department of Labor and Workforce Development.

"Division" means the Division of Wage and Hour Compliance, in the Department.

"Domestic services" means services of a household nature and performed by an individual in, or about, a private home on a permanent or temporary basis and includes services performed by a domestic worker.

"Domestic worker" or "worker" means hourly and salaried employees, full-time and part-time individuals, and temporary individuals, and is narrowly construed to mean any worker who:

1. Works for one or more employers; and

2. Is an individual who works in a residence for the purposes of providing any of the following services: caring for a child; serving as a companion or caretaker for a sick, convalescing, or elderly person or a person with a disability; housekeeping or house cleaning; cooking; providing food or butler service; parking cars; cleaning laundry; gardening; personal organizing; or for any other domestic service purpose.

"Domestic worker" or "worker" does not include the following:

1. A family member, with "family member" meaning a spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister, whether the individual is related by blood, marriage, or adoption;

2. An individual primarily engaged in house sitting, pet sitting, or dog walking;

3. An individual working at a business operated primarily out of the residence, such as a home daycare business;

4. An individual whose primary work involves household repair or maintenance, such as a roofer, plumber, mason, painter, or other similar contractor;

5. An employee of the State or the United States; or

6. An individual established as a kinship legal guardian, as defined at N.J.S.A. 3B:12A-2, of a child who lives in the residence or an individual who participates in the Kinship Navigator Program, as authorized by the Department of Children and Families, as a caregiver of a child who lives in the residence and receives services provided by a kinship navigator service provider.

"Employ" means to suffer or to permit to work.

"Employee" means "employee" as that term is defined at N.J.S.A. 34:11-4.1(b).

"Employer" means "employer" as that term is defined at N.J.S.A. 34:11-4.1(a).

"Employment agency" means any person or entity that procures, or attempts to procure, any workers for referral to a third party.

"Hiring entity" means any employer, as defined at N.J.S.A. 34:11-4.1, who employs a domestic worker and also means any person, firm, business, partnership, association, corporation, limited liability company, or other entity, including referral, employment, and internet-based or on-demand platforms, that provides compensation directly or indirectly to a domestic worker for the performance of domestic services and any person or persons acting directly or indirectly in the interest of the employer in relation to the domestic worker.

"Live-in domestic worker" includes any domestic worker, who, as part of their employment, resides in the personal residence of the employer.

"Referral agency" means any person or entity that procures, or attempts to procure, directly or indirectly, through placement in a physical or virtual labor pool:

1. Employees; and

2. After procurement, does not continue involvement in the terms of exchange of domestic services with the employees in any way, with the exception of the following:

i. Continuing to display, host, or advertise, either through physical means or virtual means, the workers' contact information, job qualifications, resume, image, or digital profile, which employers or clients can use to independently contact employees about employment; or

ii. Removing, either through physical means or virtual means, the workers' contact information, job qualifications, resume, image, or digital profile, which employers or clients can use to independently contact employes, upon the mandate of any Federal, State, or local laws.

"Written" or "writing" means a printed or printable communication in physical or electronic form, including a communication that is transmitted through email, text message, or a computer system, or is otherwise sent and maintained electronically.

SUBCHAPTER 3. WRITTEN EMPLOYMENT CONTRACT

12:73-3.1 Written employment contract requirement—employer hiring entity

(a) Prior to the commencement of employment, each employer of a domestic worker shall draft and offer to the domestic worker, a written contract of employment, which sets forth the following, at a minimum:

1. The term of the contract;

2. A specific list of the domestic worker's job duties;

3. The regular hourly wage and hourly wage for overtime, which will be paid by the employer to the domestic worker.

i. If the domestic worker's hourly wage and hourly wage for overtime will vary from week to week, then the employer may substitute a statement to that effect; provided that the employer also agrees with the body of the written contract to notify the domestic worker prior to the start of each workweek, of the worker's hourly wage and hourly wage for overtime for that week;

4. The domestic worker's weekly schedule, including the number of hours that the domestic worker will be working each week.

i. If the domestic worker's weekly schedule will vary from week to week, then the employer may substitute a statement to that effect; provided that the employer also agrees within the body of the written contract to notify the domestic worker prior to the start of each workweek, of the weekly schedule for that week, including the number of hours that the domestic worker will be working;

5. The manner and frequency of payment by the employer of the domestic worker's wages;

6. A listing of the frequency, duration, and nature of rest and meal periods that will be provided by the employer to the domestic worker, including a description of any conditions placed by the employer on the domestic worker during such rest and meal periods;

7. A listing and description of any paid or unpaid leave provided by the employer to the domestic worker, including, but not limited to, sick time and paid holidays;

8. A listing and description of any benefits other than paid or unpaid leave provided by the employer to the domestic worker;

9. A listing and description of the modes of transportation required, if any, and whether such transportation is provided by the employer to the domestic worker;

10. If housing is provided by the employer to the domestic worker, the value of such housing;

11. For live-in domestic workers, a listing and description of the sleeping period and personal time, including a description of any conditions placed by the employer on the domestic worker during such sleeping periods or personal time; and

12. Any other terms and conditions of employment.

(b) Each employer of a domestic worker, prior to the commencement of employment, shall afford the domestic worker an opportunity to negotiate the terms of the written employment contract provided by the employer to the domestic worker in draft pursuant to (a) above.

1. Each employer of a domestic worker shall provide the domestic worker no less than three business days to review the draft written employment contract that has been provided to the domestic worker by the employer.

(c) No employer shall employ a domestic worker until a written contract of employment including, at a minimum, the items listed at (a)1 through 12 above, has been agreed to and signed by both the employer and the domestic worker.

(d) The written employment contract required pursuant to this section shall not include any of the following:

[page=2257] 1. A mandatory pre-dispute arbitration agreement for claims made by a domestic worker against a hiring entity regarding the local rights of the domestic worker; or

2. A non-disclosure agreement, or non-competition or non-disparagement agreement, limiting the ability of the domestic worker to seek compensation for performing domestic services after the worker ceases to receive compensation from the hiring entity for the performance of domestic services.

(e) The written employment contract required pursuant to this section shall not be construed to waive the protections of domestic workers pursuant to Federal, State, or local laws.

(f) The written employment contract required pursuant to this section shall be in English and such other language as may be preferred by the domestic worker.

1. The employer shall make reasonable efforts to determine if the domestic worker would prefer the written employment contract to be in a language other than English.

(g) Where, applying the standard at N.J.A.C. 12:73-8.1, there are joint employers of a domestic worker, there shall be a single written employment contract that is signed by each joint employer and by the domestic worker.

(h) The Department shall make available on its internet website for use by employers of domestic workers, a model written employment contract or model written employment contracts that would comply with the requirements of the Act.

(i) A material breach by an employer of a written employment contract with a domestic worker shall constitute a violation of the Act, without regard to whether the breach is of a provision required by the Act.

12:73-3.2 Written employment contract requirement—non-employer hiring entity

(a) On the date a referral agency or employment agency enters into an agreement with a prospective employer or prospective joint employers to employ a domestic worker, the referral agency or employment agency shall provide:

1. Both the domestic worker and the prospective employer(s) with a copy of this subchapter; and

2. The prospective employer(s) with any model written employment contracts that have been made available on the Department's internet website.

12:73-3.3 Written employment contract requirement—exemption

This subchapter shall not apply when the domestic worker is performing casual work or work of less than five hours per month.

SUBCHAPTER 4. MEAL AND REST PERIODS

12:73-4.1 Meal periods

(a) After more than five consecutive hours worked by the domestic worker, the domestic worker's employer(s) shall provide the domestic worker with a 30-minute meal period.

(b) The meal period provided to the domestic worker pursuant to (a) above may be unpaid, provided that the domestic worker is both relieved of all work duties and permitted to leave the work site during the meal period.

(c) Where the domestic worker is not relieved of all work duties and is not permitted to leave the work site during the meal period, the meal period shall be considered "on-duty," subject to the requirements at N.J.A.C. 12:73-4.4, and the domestic worker shall be paid for the meal period at the domestic worker's regular rate of pay.

(d) Where the domestic worker takes a rest period pursuant to N.J.A.C. 12:73-4.2, that shall not result in a break in "consecutive hours worked," as that term is used at (a) above.

12:73-4.2 Rest periods

(a) For each four consecutive hours worked by the domestic worker, the employer(s) of a domestic worker shall provide the domestic worker with a rest period of not less than 10 minutes.

(b) Where the domestic worker is not relieved of all work duties during the rest period, the rest period shall be considered "on-duty," subject to the requirements at N.J.A.C. 12:73-4.4.

(c) The domestic worker shall be paid for the rest period at the domestic worker's regular rate of pay, regardless of whether the rest period is considered "on-duty."

12:73-4.3 Live-in domestic worker; 24-hour period of rest

(a) A live-in domestic worker shall not be required to work more than six consecutive days for the same employer without a 24-hour period of rest.

(b) During the 24-hour period of rest provided to the live-in domestic worker pursuant to (a) above, the live-in domestic worker shall be both relieved of all work duties and permitted to leave the work site.

(c) The 24-hour period of rest provided to the live-in domestic worker pursuant to (a) above may be unpaid.

12:73-4.4 "On-duty" meal and rest periods

(a) An "on-duty" meal period shall be permitted only when each of the following requirements are met:

1. When the nature of the work prevents the domestic worker from both being relieved of all duties and being permitted to leave the work site; and

2. When there is a written agreement between the domestic worker and the employer(s) of the domestic worker allowing for "on-duty" meal periods.

(b) An "on-duty" rest period shall be permitted only when each of the following requirements are met:

1. When the nature of the work prevents the domestic worker from being relieved of all duties; and

2. When there is a written agreement between the domestic worker and the employer(s) of the domestic worker allowing for "on duty" rest periods.

(c) The written agreement between the domestic worker and the employer(s) of the domestic worker pursuant to (a)2 and (b)2 above may be revoked, in writing, by the domestic worker at any time.

(d) During an "on duty" meal period or rest period, the domestic worker shall, to the extent possible, given the domestic worker's duties for the employer(s), be permitted to engage in personal activities, such as resting, eating a meal, drinking a beverage, making a personal telephone call, or making other personal choices.

(e) During all "on-duty" meal periods and rest periods, the domestic worker shall be paid at the domestic worker's regular rate of pay.

12:73-4.5 Prohibition against impeding or discouraging use of meal or rest periods

The employer of a domestic worker shall not impede or discourage a domestic worker from using a meal or rest period.

SUBCHAPTER 5. TERMINATION OF EMPLOYMENT; NOTIFICATION

12:73-5.1 Termination of employment; notification

(a) With the exception of the circumstances described at (b) and (c) below, the employer(s) of a domestic worker shall notify the domestic worker of a termination of employment no less than 14 calendar days prior to the termination of employment.

(b) The employer(s) of a live-in domestic worker shall notify the live-in domestic worker of a termination of employment no less than 28 calendar days prior to the termination of employment.

(c) The notification requirements at (a) and (b) above shall not apply in the following circumstances:

1. Where the employer(s) has a good faith belief, and without reckless disregard or willful ignorance of the truth, that the domestic worker has engaged in significant misconduct.

i. For the purpose of this section, the term "significant misconduct" shall mean that the domestic worker abused, neglected, or caused any other harmful conduct against the employer, members of the employer's family, or individuals residing in the employer's household;

2. Where the employer is a temporary help service firm, employment agency, or other staffing or placement agency, health care service firm, home health agency, or hospice provider, when the domestic worker completes placement in a particular position and is not immediately placed or scheduled for another position by the employer, but the domestic [page=2258] worker remains on the employer's payroll for future placement opportunities; or

3. Where the employer is an individual and not a temporary help service firm, employment agency, or other staffing or placement agency, health care service firm, home health agency, or hospice provider, the domestic worker completes or fulfills all duties of the position, and there is no longer a practical need for the position, including, but not limited to, if the domestic worker's employer is an individual who has employed the domestic worker to care for a person who is terminally ill and the terminally ill person dies.

SUBCHAPTER 6. DOMESTIC WORKER PRIVACY

12:73-6.1 Prohibitions relating to domestic worker privacy

(a) A hiring entity shall be prohibited from any of the following:

1. Keeping, or holding, the original copies of any personal documents of a domestic worker;

2. Monitoring or recording, through any means, the activities of a domestic worker:

i. Using any bathroom or similar facility;

ii. In the living quarters of a domestic worker; or

iii. While the domestic worker is engaged in any activities associated with dressing or changing clothes; or

3. Monitoring, recording, or interfering with the private communications of a domestic worker.

SUBCHAPTER 7. RECORDKEEPING

12:73-7.1 Recordkeeping

(a) For each domestic worker employed by a hiring entity, the employer hiring entity shall maintain the following records for a period of no less than two years:

1. Hours worked by the domestic worker;

2. Rate(s) of pay of the domestic worker;

3. Meal and rest periods provided to the domestic worker;

4. Leave time earned and used by the domestic worker, if applicable; and

5. The written agreement between the domestic worker and the employer hiring entity.

(b) A hiring entity shall make all records relating to the employment of a domestic worker available for inspection by the Department, consistent with the powers of the Commissioner pursuant to N.J.S.A. 34:11-4.9.

(c) If a hiring entity does not maintain the required records or does not allow the Department reasonable access to the records, an adverse inference may be drawn as to the hiring entity's compliance with the provisions of the Act and this chapter that would otherwise have been documented by the record(s) at issue.

SUBCHAPTER 8. JOINT EMPLOYERS

12:73-8.1 Joint employers

(a) For the purposes of this chapter, two or more employers of the same employee are joint employers of that employee if the employers share or co-determine those matters governing the employee's essential terms and conditions of employment.

(b) To "share or codetermine those matters governing the employee's essential terms and conditions of employment" means for an employer to possess the authority to control (whether directly, indirectly, or both) or to exercise the power to control (whether directly, indirectly, or both) one or more of the employee's essential terms and conditions of employment.

(c) "Essential terms and conditions of employment" include the following:

1. Wages, benefits, and other compensation;

2. Hours of work and scheduling;

3. The assignment of duties to be performed;

4. The supervision of the performance of duties;

5. Work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline;

6. The tenure of employment, including hiring and discharge; and

7. Working conditions related to the safety and health of the employee.

(d) Whether an employer possesses the authority to control, or exercise the power to control, one or more of the employee's essential terms and conditions of employment are determined pursuant to common-law agency principles. For the purposes of this section:

1. Possessing the authority to control one or more essential terms and conditions of employment is sufficient to establish status as a joint employer, regardless of whether control is exercised; and

2. Exercising the power to control indirectly (including through an intermediary) one or more essential terms and conditions of employment are sufficient to establish status as a joint employer, regardless of whether the power is exercised directly.

(e) A joint employer of a domestic worker is subject to each of the requirements of this chapter that apply to an employer of a domestic worker.

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