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RULE PROPOSALS

Reporter

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RULE PROPOSALS

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LABOR AND WORKFORCE DEVELOPMENT -- DIVISION OF WAGE AND HOUR COMPLIANCE

Interested Persons Statement

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

Agency

LABOR AND WORKFORCE DEVELOPMENT > DIVISION OF WAGE AND HOUR COMPLIANCE

Administrative Code Citation

Proposed New Rules: N.J.A.C. 12:74

Text

Requirements for Notification of Promotion, New Job, and Transfer Opportunities

Authorized By: Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:1-20 and 34:1A-3(e).

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

Proposal Number: PRN 2025-124.

Submit written comments by November 14, 2025, to:

David Fish, Executive Director
Legal and Regulatory Services
New Jersey Department of Labor and Workforce Development
PO Box 110-13th Floor
Trenton, New Jersey 08625-0110

david.fish@dol.nj.gov

The agency proposal follows:

Summary

The Department of Labor and Workforce Development (Department) is proposing new rules at N.J.A.C. 12:74, to implement N.J.S.A. 34:6B-23 (Act), which establishes notification requirements for employers regarding promotion, new job, and transfer opportunities. Specifically, subsection a of the Act requires that, prior to making a promotion decision, an employer must make reasonable efforts to announce, post, or otherwise make known the existence of the promotional opportunity to all employees in the department or departments of the employer to which the promotional opportunity is open. Subsection a of the Act also states that "any promotion for a current employee that is awarded based on years of experience or performance shall not be subject to the notification requirements established in this subsection," and that, "nothing in this subsection shall be construed to prohibit an employer from making a promotion on an emergent basis due to an unforeseen event."

Subsection b of the Act requires that for each new job opportunity or transfer opportunity the employer advertises, the employer must, at a minimum, include within the notification, the hourly rate of pay or annual salary, as applicable, or a range of the hourly rate of pay or annual salary, as applicable; and a general description of benefits and other compensation programs for which the applicant would be eligible if selected for the new job or transfer opportunity.

Subsection c of the Act establishes the administrative penalties that the Department may assess against employers for a violation(s) of the Act.

Subsection d of the Act establishes special rules for temporary help service firms and consulting firms, whereby such firms: (1) are not required to include the above-listed information regarding wages, benefits, and other compensation programs within notifications that are being published for the purpose of identifying qualified applicants for potential future job openings, rather than to identify applicants for existing job openings; and (2) are required, at the time of interview or hire for a specific job opening, to provide the applicant for temporary employment with the above-listed information regarding wages, benefits, and other compensation programs.

To implement the Act, the Department is proposing new rules at N.J.A.C. 12:74, which would include the following subchapters.

Proposed new N.J.A.C. 12:74-1 would set forth general provisions, including the purpose and scope of the chapter and sections that address administrative penalties, hearings, and the process for filing a complaint alleging a violation of the Act or this chapter with the Division of Wage and Hour Compliance within the Department of Labor and Workforce Development.

[page=2221] Proposed new N.J.A.C. 12:74-2 would define the words and terms used throughout the chapter.

Proposed new N.J.A.C. 12:74-3.1 would address the Act's notification requirements for promotions. It would also establish what constitutes "reasonable efforts" to announce, post, or otherwise make known the existence of a promotional opportunity to all employees in the department or departments of the employer to which the promotional opportunity is open. Proposed new N.J.A.C. 12:74-3.2 sets forth the exemptions from the notification requirements.

Proposed new N.J.A.C. 12:74-4 would address the Act's notification content requirements for new job opportunities and transfer opportunities. Also, for employers who choose, as expressly permitted pursuant to the Act, to include a pay range, rather than a single hourly rate of pay or annual salary, within the new job opportunity or transfer opportunity notification, proposed new N.J.A.C. 12:74-4.1 would establish a maximum range spread. This would ensure an appropriate level of specificity when pay ranges are used.

Proposed new N.J.A.C. 12:74-5 would address the Act's requirements for temporary help service firms and consulting firms.

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

Social Impact

The vast majority of the proposed new rules either mirror the Act or are necessitated by the Act. Therefore, whatever positive or negative social impact might be felt would derive in the first instance from the Act, and not the proposed new rules. As to the remainder of the proposed new rules, it is the Department's belief that they would have a positive social impact, in that they would minimize any possible confusion as to who is covered by the Act, what activities are prohibited, and what sanctions may be imposed pursuant to the Act. The proposed new rules would also provide detailed guidance to the regulated community as to how to comply with the Act.

Furthermore, the proposed new rules would have a positive social impact in that they would establish a process for the assessment of penalties and the hearing of appeals, thereby enabling the Department to effectively enforce the law. Finally, the proposed new rules would have an overall positive social impact in that they would provide a regulatory framework for the Department's administration of the Act.

Economic Impact

As indicated in the Social Impact statement above, the vast majority of the proposed new rules either mirror the Act or are necessitated by the Act. Therefore, whatever positive or negative economic impact might be felt, including by employers and applicants for promotion, new job, and transfer opportunities, would derive in the first instance from the Act, not the proposed new rules. That portion of the proposed new rules that addresses the levying of penalties by the Department against those who violate the Act could, of course, have a negative economic impact upon those hiring entities that run afoul of the Act. As to the remainder of the new rules, it is the Department's belief that they would have a positive economic impact in that they would minimize any possible confusion as to who is covered by the Act, what conduct is prohibited pursuant to the Act, and how employers may comply with the Act, among other important issues. It is the Department's hope that minimizing confusion as to these issues will avoid costs for those impacted by the Act of unnecessary litigation, which might otherwise result.

Federal Standards Statement

The proposed new rules do not exceed standards or requirements imposed by Federal law. That is, there are currently no Federal standards or requirements relating to the publication of notifications by employers of promotion, new job, and transfer opportunities. As there are currently no such Federal standards or requirements, no Federal standards analysis is required relative to the proposed new rules.

Jobs Impact

The Department does not anticipate that the proposed new rules would have any impact on the generation or loss of jobs.

Agriculture Industry Impact

The Department does not anticipate that the proposed new rules would have any impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed new rules would set forth the same requirements for employers regarding notifications of promotion, new job, and transfer opportunities as are in the Act. These requirements for notification of promotion, new job, and transfer opportunities are expressly dictated by the Act. The Department has no discretion to deviate from those statutory mandates. As to the impact of the Act and the proposed new rules on "small businesses," as that term is defined in the Regulatory Flexibility Act, the Act defines the term "employer" to include only those persons, companies, corporations, firms, labor organizations, or associations which have 10 or more employees over 20 calendar weeks, and that do business, employ persons, or take applications for employment within New Jersey, including the State, any county or municipality, or any instrumentality thereof. The proposed new rules would include the same definition of the term "employer." The proposed new rules would also include the size of the employer among the factors to be considered when determining what constitutes an appropriate administrative penalty for a particular violation. This is within the Department's discretion pursuant to the Act.

Housing Affordability Impact Analysis

The proposed new rules would not evoke a change in the average costs associated with housing, nor would they have any effect on the affordability of housing. The basis for this finding is that the proposed new rules set forth requirements for employer notification of promotion, new job, and transfer opportunities. The proposed new rules do not pertain to housing.

Smart Growth Development Impact Analysis

The proposed new rules would not evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan. The basis for this finding is that the proposed new rules include requirements for employer notification of promotion, new job, and transfer opportunities. The proposed new rules do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere else in the State of New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commissioner of the Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

CHAPTER 74

REQUIREMENTS FOR NOTIFICATION OF PROMOTION, NEW JOB, AND TRANSFER OPPORTUNITIES

SUBCHAPTER 1. GENERAL PROVISIONS

12:74-1.1 Purpose and scope

(a) The purpose of this chapter is to implement N.J.S.A. 34:6B-23 (the Act), which sets forth requirements for employers regarding notifications of promotion, new job, and transfer opportunities.

(b) This chapter is applicable to employers, as that term is defined at N.J.S.A. 34:6B-23(e) and at N.J.A.C. 12:74-2.1.

12:74-1.2 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 an employer 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 \$ 300.00; and
2. Second and subsequent violations--not more than \$ 600.00 for each violation.

(b) In assessing an administrative penalty pursuant to this section, the Commissioner shall consider the following factors, where applicable, in [page=2222] 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 employer;
3. The good faith of the employer;
4. The size of the employer's business; and
5. Any other factors which 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. 12:74-1.3.

(d) An employer's failure to comply with N.J.S.A. 34:6B-23(a) or N.J.A.C. 12:74-3 for one promotional opportunity shall be considered one violation for all listings of a particular promotion, even if that promotion is listed on multiple forums.

(e) An employer's failure to comply with N.J.S.A. 34:6B-23(b) or N.J.A.C. 12:74-4 for all postings for a particular new job opportunity or transfer opportunity shall be considered one violation regardless of the number of postings that list, or forums that advertise, that new job opportunity or transfer opportunity.

12:74-1.3 Hearings

(a) When the Commissioner assesses an administrative penalty pursuant to N.J.A.C. 12:74-1.2, the employer against which the administrative penalty has been assessed shall have the right to a hearing pursuant to (b) below.

(b) No administrative penalty shall be levied pursuant to N.J.A.C. 12:74-1.2, 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. 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 of Wage and Hour Compliance 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 employer 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.

12:74-1.4 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.

SUBCHAPTER 2. DEFINITIONS

12:74-2.1 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. 34:6B-23.

"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.

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

"Consulting firm" means "consulting firm," as that term is defined at N.J.A.C. 13:45B-1.2.

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

"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 any person, company, corporation, firm, labor organization, or association which has 10 or more employees over 20 calendar weeks, whether those employees work inside or outside of New Jersey, and does business, employs persons, or takes applications for employment within New Jersey, including the State, any county or municipality, or any instrumentality thereof. The term "employer" shall include employment agencies. To "take applications for employment within New Jersey" means both that the solicitation occurred in New Jersey and that the physical location of the prospective employment is in whole, or in substantial part, within New Jersey.

"Employment agency" means "employment agency" as that term is defined at N.J.A.C. 13:45B-1.2.

"New job" means a job that is neither a promotion, nor a transfer opportunity.

"Other compensation programs" means methods of compensation other than the payment of traditional wages, such as, but not limited to, commissions, bonuses, and profit-sharing.

"Promotion" means a change in job title and an increase in compensation.

"Temporary help service firm" means "temporary help service firm" as that term is defined at N.J.A.C. 13:45B-1.2.

"Transfer" means a change in job title and no increase in compensation.

SUBCHAPTER 3. PROMOTIONS

12:74-3.1 Notification requirements for promotions

(a) Prior to making a promotion decision, an employer shall make reasonable efforts to announce, post, or otherwise make known the existence of the promotional opportunity to all employees in the department(s) of the employer to which the promotional opportunity is open.

(b) For the purpose of this subchapter, the phrase "reasonable efforts" shall mean the following:

1. Conspicuously posting notification of the promotional opportunity in a place(s) within the employer's workplace(s) that is/are accessible to all employees in the department(s) of the employer to which the promotional opportunity is open; and

2. In the event the employer has an internet site or intranet site for exclusive use by its employees and to which all employees have access, posting notification of the promotional opportunity on the employer's internet site or intranet site.

12:74-3.2 Exemptions from the notification requirements for promotions

(a) Any promotion for a current employee that is awarded based on years of experience or performance shall not be subject to the notification requirements established in this subchapter.

(b) Nothing in this subchapter shall be construed to prohibit an employer from making a promotion on an emergent basis due to an unforeseen event.

SUBCHAPTER 4. NEW JOB AND TRANSFER OPPORTUNITIES

12:74-4.1 Notification content requirements; new job and transfer opportunities

(a) For each new job opportunity or transfer opportunity that the employer advertises either externally or internally, the employer shall, at a minimum, include the following information within the notification of the new job opportunity or transfer opportunity:

1. The hourly rate of pay or annual salary, as applicable, or a range of the hourly rate of pay or annual salary, as applicable; and

2. A general description of benefits and other compensation programs for which the applicant would be eligible if selected for the new job opportunity or transfer opportunity.

(b) When the employer includes a range of the hourly rate of pay or a range of the annual salary at (a)1 above, the range spread from minimum hourly rate of pay or salary to maximum hourly rate of pay or salary shall be no more than 60 percent of the minimum hourly rate of pay or minimum annual salary, as applicable.

[page=2223] 1. The method for calculating the percentage range spread should be to subtract the minimum pay from the maximum pay; divide the result by the minimum pay; and then multiply that number by 100.

2. This subsection shall not apply when the hourly rate of pay range spread or salary range spread from maximum to minimum is established through a collective bargaining agreement or by law, rule, or local ordinance. Where the hourly rate of pay range spread or salary range spread from maximum to minimum is established through a collective bargaining agreement or by law, rule, or local ordinance, the employer may advertise the new job opportunity or transfer opportunity using that hourly rate of pay range spread or salary range spread.

(c) When the employer includes a range of the hourly rate of pay or a range of the annual salary at (a)1 above, that range shall contain a bottom number and a top number; that is, the range provided by the employer shall not be open ended (for example, \$ 17.00 per hour and up).

(d) When an advertisement for a new job or transfer opportunity with the employer appears on a third-party site, whether written or electronic, the employer shall be cited for a violation(s) of the Act or this chapter only when the employer either retains control over the content of the advertisement that appears on the third-party site, or has expressly agreed or contracted with the third-party site to relinquish control over the content of the advertisement that appears on the third-party site.

1. For example, where the arrangement between an employer and a third-party internet site is for the employer to provide the advertisement's content to the third-party internet site and for the third-party internet site to post that content, then the employer shall be assessed for a violation(s) of the Act or this chapter stemming from the advertisement's content. Similarly, where the arrangement between an employer and a third-party internet site is for the employer to provide information regarding the job or transfer opportunity to the third-party internet site and for the internet site to create the content of the advertisement for the employer, the employer shall be assessed for a violation(s) of the Act or this chapter stemming from the advertisement's content, because the employer voluntarily relinquished control of the advertisement's content to the third-party internet site. However, if a third-party internet site is designed to gather information regarding job opportunities from the internet and to aggregate that information on its site, and where this occurs without any direct involvement of the employer, then the employer shall not be assessed for a violation(s) of the Act or this chapter stemming from the content of the advertisement that appears on the third-party site.

(e) When an advertisement for a new job or transfer opportunity with the employer that appears on the internet (for which the employer would be responsible pursuant to (d) above) does not meet the content requirements of this section, but that advertisement contains a link, which when activated, immediately takes the individual viewing the advertisement without any barriers to another site where all of the required content is clearly visible, then there is no violation of this section; provided that the primary internet site which contains the link, indicates the name and location of the employer, the job or title with the employer for which the individual may apply, and states that the link provided, if activated, will immediately take the potential applicant to another site, which will contain the required information regarding the pay and benefits associated with the advertised job or transfer opportunity.

(f) Nothing in this subchapter shall be construed to prohibit an employer, at the time of making an offer of employment to an applicant, from increasing the wages, benefits, and compensation that were identified in the new job or transfer opportunity notification.

(g) This subchapter shall not apply to examination announcements that are posted by the New Jersey Civil Service Commission, as these are not notifications of new job opportunities or transfer opportunities, but rather, are notifications of examinations.

SUBCHAPTER 5. TEMPORARY HELP SERVICE FIRMS AND CONSULTING FIRMS

12:74-5.1 Temporary help service firms and consulting firms

(a) Temporary help service firms and consulting firms are not required to include the information listed at N.J.A.C. 12:74-4.1(a)1 and 2, when a notification is being published for the purpose of identifying qualified applicants for potential future job openings, rather than existing job openings.

(b) Notwithstanding (a) above, a temporary help service firm or consulting firm shall, at the time of interview or hire for a specific job opening, be required to provide to the applicant for temporary employment, the pay and benefit information listed at N.J.A.C. 12:74-4.1(a)1 and 2.

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