

LABOR AND WORKFORCE DEVELOPMENT

DIVISION OF WAGE AND HOUR COMPLIANCE

Minimum Wage; Long-term care facility direct care staff members

Proposed Amendments: N.J.A.C. 12:56-2.1 and 3.1

Proposed New Rule: N.J.A.C. 12:56-3.7

Authorized By: _____

Robert Asaro-Angelo, Commissioner

Department of Labor and Workforce Development

Authority: N.J.S.A. 34:11-56a5.

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

Proposal Number: PRN 2020 - _____

A public hearing on the proposed amendment will be held on the following date at the following location:

10:00 A.M. to 12:00 Noon

New Jersey Department of Labor and Workforce Development

John Fitch Plaza

13th Floor Auditorium

Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 777-2960 if you wish to be included on the list of speakers.

Submit written comments by _____ to:

David Fish, Executive Director
Legal and Regulatory Services
NJ Department of Labor and Workforce Development
P.O. Box 110 – 13th Floor
Trenton, New Jersey 08625-0110
david.fish@dol.nj.gov

The agency proposal follows:

Summary

The Department is proposing amendments to N.J.A.C. 12:56-2.1 and 3.1, and a new rule at N.J.A.C. 12:56-3.7, in order to implement P.L.2020, c.89, which amends N.J.S.A. 34:11-56a et seq., the New Jersey Wage and Hour Law (NJWHL), so as to establish a minimum hourly wage for long-term care facility direct care staff members that is \$3.00 higher than the minimum hourly wage set at N.J.S.A. 34:11-56a4(a). The latter section of the NJWHL establishes the method for calculation of an incremental increase in the State minimum hourly wage and the time frame for phase in of that State minimum hourly wage to \$15.00 per hour. Under P.L. 2020, c. 89, the minimum hourly wage for long-term care facility direct care staff members has been established, effective November 1, 2020, at a rate \$3.00 higher than the minimum hourly wage set at N.J.S.A. 34:11-56a4(a), and will increase from that amount over the same span of years and at the same pace as the State minimum hourly wage until it reaches \$18.00. That

is to say, as the State minimum hourly wage on November 1, 2020 was \$11.00, the minimum hourly wage for long-term care facility direct care staff became \$14.00 on that date. On January 1, 2021, the minimum hourly wage for long-term care facility direct care staff became \$15.00, which is \$3.00 above the 2021 State minimum hourly wage of \$12.00. The State Wage and Hour Law incorporates an annual calculation that will increase the State minimum hourly wage each year through 2024 by either \$1.00 or an amount based on any increase in the consumer price index over the prior year, whichever is greater. Thereafter, under the State Constitution, the State minimum hourly wage will be adjusted annually based on any increase in the consumer price index from the prior year. Under P.L. 2020, c. 89, the minimum hourly wage for long-term care facility direct care staff members will always be set at an amount \$3.00 higher than the annually adjusted State minimum hourly wage.

In order to implement these changes to the NJWHL resulting from P.L. 2020, c. 89, the Department is proposing the following:

1. Amendments to N.J.A.C. 12:56-2.1, which would incorporate statutory definitions for the following terms: “Long-term care facility direct care staff member” and “Long-term care facility.” Specifically, P.L. 2020, c. 89, defines the term “Long-term care facility direct care staff member” to mean any health care professional licensed or certified pursuant to Title 26 or Title 45 of the Revised Statutes who is employed by a long-term care facility and who provides personal care, assistance, or treatment services directly to residents of the facility in the course of the professional’s regular duties. The Department proposes to adopt that definition verbatim. P.L. 2020, c. 89, does **not** contain a definition for the

term “Long-term care facility;” however, the Department proposes to adopt the definition for that term which is found at N.J.S.A. 26:2H-12.87. The term “long-term care facility” is defined within N.J.S.A. 26:2H-12.87 to mean a nursing home, assisted living residence, comprehensive personal care home, residential health care facility, or dementia care home licensed pursuant to P.L. 1971, c. 136 (N.J.S.A. 26:2H-1 et seq.);

2. An amendment to N.J.A.C. 12:56-3.1, which would add a reference to the newly adopted N.J.A.C. 12:56-3.7 as among those sections of Chapter 3 (along with N.J.A.C. 12:56-3.2, 3.3, 3.4 and 3.5) that contain exceptions to the minimum hourly wage set at N.J.A.C. 12:56-3.1; and

3. A new rule at N.J.A.C. 12:56-3.7, which would address the incremental increase in the State minimum hourly wage for “long-term care facility direct care staff members.”

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

Social Impact

The entirety of what is contained within the proposed amendments and new rule is expressly mandated by P.L.2020, c.89. Therefore, whatever social impact might be felt, positive or negative, by citizens of the State, including business owners throughout the State, would derive in the first instance from P.L.2020, c.89, and not from the proposed amendments or new rule. The Department believes that the proposed amendments and new rule would have a positive social impact in that they would reflect

the statutory establishment of an appropriate minimum level of compensation for direct care staff who work in the challenging environment of long-term care facilities and they would clarify precisely what is the State minimum hourly wage during any particular year for direct care employees working at long-term care facilities. This would allow that particular class of workers to adjust their expectations as to what they will receive in pay for the type of work they perform, and for employers to plan for increases in pay. The well-being of such workers will generally be advanced by increases in the State minimum hourly wage for long-term care facility direct care staff members as that class of workers will be better able to meet their financial needs and the financial needs of their families. Employee productivity may also increase in response to the higher State minimum hourly wage for long-term care facility direct care staff members resulting in social benefits to employers as well.

Economic Impact

Because all of the material in the proposed amendments to N.J.A.C. 12:56-2.1 and 3.1 and the new rule at N.J.A.C. 12:56-3.7 is necessitated by P.L. 2020, c. 89, any economic impact that might be felt, positive or negative, by citizens of the State, including business owners throughout the State, would derive in the first instance from the enactment of P.L.2020, c.89, not from the proposed amendments or new rule. The Fiscal Analysis that accompanied A4482, which became P.L. 2020, c.89, states that the Office of Legislative Services (OLS) “estimates this bill will increase costs for nursing homes, by an indeterminate amount.” The estimate was based on an analysis that direct care workers include not only certified nursing assistants who earn \$15/hour, but also entry level direct care providers who earn minimum wage. The OLS analysis projected that P.L. 2020, c. 89, might result in some degree of wage compression, as

the hourly wage of entry level workers approaches the hourly rate currently being earned by the certified nursing assistants, requiring long-term care facilities to increase wages for higher earning direct care staff in order to maintain their “wage differential compared to lower earning direct care staff.” However, the study noted, “[f]rom 2025 on, the provisions of the bill will be limited to cost-of-living increases, which will cap annual wage increases for [long-term care facilities],” thus indicating that employers will adjust to the higher wages.

The Department believes the proposal would generally have a positive economic impact in that it would provide fair compensation to direct care staff who work in the challenging environment of long-term care facilities. The proposal would provide clarity and certainty concerning what the State minimum hourly wage is for direct care workers employed by long-term care facilities, allowing workers and businesses to adjust their expectations based on a detailed set of rules. It is the Department’s hope that minimizing confusion as to these issues will save costs for employers and employees by avoiding unnecessary litigation, which might otherwise result.

Federal Standards Analysis

Section 6 of the Federal “Fair Labor Standards Act of 1938” (29 U.S.C. §206), contains a minimum hourly wage rate of \$7.25 per hour, effective July 24, 2009 with no scheduled adjustments, annual or otherwise; whereas N.J.A.C. 12:56-3.7, as proposed, would contain a minimum hourly wage rate for long-term care facility direct care staff members in the State of New Jersey, effective November 1, 2020, of \$14.00 per hour, with annual increases of \$1.00 per hour until January 1, 2024 when the State minimum wage for such direct care workers would be at least \$18.00 per hour. The existence of a

minimum hourly wage rate in New Jersey which exceeds the Federal minimum hourly wage rate will most certainly have an economic impact on all of the citizens of this State, whether those citizens are minimum wage earners who will receive a pay raise, business owners who will be required to pay the increased State minimum hourly wage to their employees, or citizens of the State who are neither minimum wage earners, nor business owners, who will be impacted in one way or another (whether positively or negatively) by the existence of a State minimum hourly wage. However, the Department has no discretion to deviate from P.L.2020, c.89, which, effective November 1, 2020, increased the State minimum hourly wage rate for long-term care facility direct care staff members to \$14.00 per hour and requires that the rate be increased again on January 1, 2021 to \$15.00 per hour, and again on January 1 of each year for three years thereafter. It will reach \$18.00 per hour no later than 2024.

Jobs Impact

Although the question of jobs impact was debated during the legislative consideration of the bill, the Department does not have data to support an estimate of either job creation or loss. However, any jobs impact is the result of the enactment of P.L. 2020, c. 89. The Department has no discretion to deviate from the changes to N.J.S.A. 34:11-56a4 resulting from the enactment of P.L.2020, c.89.

Agriculture Industry Impact

The proposed amendments pertain exclusively to long-term care facility direct care staff members, which bears no connection to the agriculture industry. Accordingly, the Department sees no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments and new rule would impose no reporting or recordkeeping requirements on small businesses, as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As to the impact of the increases in the State minimum hourly wage for long-term care facility direct care staff on small employers, as indicated earlier in the social, economic, jobs, and agriculture industry impact statements, the requirement that employers pay long-term care facility direct care staff members no less than the enhanced State minimum hourly wage described within the proposed amendments and new rule is due to changes to N.J.S.A. 34:11-56a4 resulting from P.L.2020, c.89, from which the Department has no discretion to deviate.

Housing Affordability Impact

The proposed amendments and new rule would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed amendments and new rule pertain to an increase in the statutory minimum hourly wage for long-term care facility direct care staff members, and do not pertain to housing.

Smart Growth Development Impact

The proposed amendments and new rules would not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendments and new rules pertain to an increase in the statutory minimum hourly wage for long-term care facility direct care staff members and do not pertain to housing production, either within Planning Areas 1 or 2, or within designated centers.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commissioner 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 proposal follows (additions indicated with boldface **thus**; deletions indicated in brackets [thus]):

12:56-2.1 Definitions

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

. . .

“Long-term care facility” means “long-term care facility” as that term is defined at N.J.S.A. 26:2H-12.87;

“Long-term care facility direct care staff member” means any health care professional licensed or certified pursuant to Title 26 or Title 45 of the Revised Statutes who is employed by a long-term care facility and who provides personal care, assistance, or treatment services directly to residents of the facility in the course of the professional’s regular duties.

12:56-3.1 Statutory minimum wage rates for specific years; general

(a) Except as provided at N.J.A.C. 12:56-3.2, 3.3, 3.4, [and] 3.5, **and 3.7**, every employee shall, effective January 1, 2021, be paid not less than \$ 12.00 per hour or the

minimum wage rate set by section 6(a)(1) of the Federal "Fair Labor Standards Act of 1938" ([29 U.S.C. § 206\(a\)\(1\)](#)), whichever is greater.

(b) through (d) (No change.)

12:56-3.7 Statutory minimum wage rate; long-term care facility direct care staff members

(a) Commencing on November 1, 2020, an employee who is a long-term care facility direct care staff member shall be paid a minimum hourly wage rate that is not less than \$3.00 in excess of the minimum hourly wage specified at N.J.A.C. 12:56-3.1.