

**SELECTED
NEW JERSEY STATE
LABOR LAWS
AND REGULATIONS**



New Jersey Department of Labor and Workforce Development
Division of Wage and Hour Compliance
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nj.gov/labor

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Notes

For more information about New Jersey selected labor laws and regulations, visit nj.gov/labor and click on *Worker Protections* and then *Wage & Hour Compliance*.

This booklet is for ready reference only. For updated official information, consult the New Jersey Statutes Annotated and the New Jersey Administrative Code.

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CHAPTER 11

WAGES

ARTICLE 1. REGULATION IN GENERAL

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34:11-4.1 Definitions

As used in this act:

a. "Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State.

For the purposes of this act the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.

b. "Employee" means any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees.

c. "Wages" means the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto.

d. "Commissioner" means the Commissioner of Labor.

34:11-4.2 Time and mode of payment; paydays

Except as otherwise provided by law, every employer shall pay the full amount of wages due to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer, in lawful money of the United States or with checks on banks where suitable arrangements are

made for the cashing of such checks by employees without difficulty and for the full amount for which they are drawn. An employer may establish regular paydays less frequently than semimonthly for bona fide executive, supervisory and other special classifications of employees provided that the employee shall be paid in full at least once each calendar month on a regularly established schedule.

If a regular payday falls on a nonwork day, that is, a day on which the workplace of an employee is not open for business, payment shall be made on the immediately preceding workday, except where it is otherwise provided for in a collective bargaining agreement.

The end of the pay period for which payment is made on a regular payday shall be not more than 10 working days before such regular payday, provided that if the regular payday falls on a nonwork day payment shall be made on the preceding work day.

34:11-4.2a Payment by deposit in financial institution; consent by employee; cancellation; notice

In lieu of paying wages directly to employees as provided by P.L.1965, c. 173, s. 2 (C. 34:11-4.2), an employer may, with the consent of some or all his employees, arrange with a financial institution or financial institutions to pay the wages of each employee so consenting by causing the amount of such employee's wages to be deposited in an account maintained in any such financial institution in the name of such employee, subject to withdrawal and other disposition by such employee to the same extent and in the same manner as if such deposit were made directly by such employee. Any such employee may, on timely notice to the employer, elect not to have his wages deposited as provided herein, and to be paid such wages directly in the manner otherwise provided by law. Financial institution as used herein means any State-chartered or Federally-chartered institution authorized to accept deposits in New Jersey.

34:11-4.3 Termination or suspension of employment

Whenever an employer discharges an employee, or when the work of an employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, or whenever an employee quits, resigns, or leaves employment for any reason, the employer shall pay the employee all wages due not later than the regular payday for the pay period during which the employee's termination, suspension or cessation of employment (whether temporary or permanent) took place, as established in accordance with section 2 of this act; or in the case of employees compensated in part or in full by an incentive system, a reasonable approximation of all wages due, until the exact amounts due can be computed; provided, however, that when any employee is suspended as a result of a labor dispute and such labor dispute involves those employees who make up payrolls, the employer may have an additional 10 days in which to pay such wages. Such payment may be made either through the regular pay channels or by mail if requested by the employee.

34:11-4.4 Withholding or diverting wages

No employer may withhold or divert any portion of an employee's wages unless:

- a. The employer is required or empowered to do so by New Jersey or United States law; or
- b. The amounts withheld or diverted are for:

(1) Contributions authorized either in writing by employees, or under a collective bargaining agreement, to employee welfare, insurance, hospitalization, medical or surgical or both, pension, retirement, and profit-sharing plans, and to plans establishing individual retirement annuities on a group or individual basis, as defined by section 408 (b) of the federal Internal Revenue Code of 1986 (26 U.S.C. § 408(b)), or individual retirement accounts at any State or federally chartered bank, savings bank, or savings and loan

association, as defined by section 408 (a) of the federal Internal Revenue Code of 1986 (26 U.S.C. § 408(a)), for the employee, his spouse or both.

(2) Contributions authorized either in writing by employees, or under a collective bargaining agreement, for payment into company-operated thrift plans; or security option or security purchase plans to buy securities of the employing corporation, an affiliated corporation, or other corporations at market price or less, provided such securities are listed on a stock exchange or are marketable over the counter.

(3) Payments authorized by employees for payment into employee personal savings accounts such as payments to a credit union, savings fund society, savings and loan or building and loan association; and payments to banks for Christmas, vacation, or other savings funds; provided all such deductions are approved by the employer.

(4) Payments for company products purchased in accordance with a periodic payment schedule contained in the original purchase agreement; payments for employer loans to employees, in accordance with a periodic payment schedule contained in the original loan agreement; payments for safety equipment; payments for the purchase of United States Government bonds; payments to correct payroll errors; and payments of costs and related fees for the replacement of employee identification, which is used to allow employees access to sterile or secured areas of airports, in accordance with a fee schedule described in any airline media plan approved by the federal Transportation Security Administration; provided all such deductions are approved by the employer.

(5) Contributions authorized by employees for organized and generally recognized charities; provided the deductions for such contributions are approved by the employer.

(6) Payments authorized by employees or their collective bargaining agents for the rental of work clothing or uniforms or for the laundering or dry cleaning of work clothing or uniforms; provided the deductions for such payments are approved by the employer.

(7) Labor organization dues and initiation fees, and such other labor organization charges permitted by law.

(8) Contributions authorized in writing by employees, pursuant to a collective bargaining agreement, to a political committee, continuing political committee, or both, as defined in section 3 of P.L.1973, c. 83 (C. 19:44A-3), established by the employees' labor union for the purpose of making contributions to aid or promote the nomination, election or defeat of any candidate for a public office of the State or of a county, municipality or school district or the passage or defeat of any public question, subject to the conditions specified in section 2 of P.L.1991, c. 190 (C. 34:11-4.4a).

(9) Contributions authorized in writing by employees to any political committee or continuing political committee, other than a committee provided for in paragraph (8) of this subsection, for the purpose of making contributions to aid or promote the nomination, election or defeat of any candidate for a public office of the State or of a county, municipality or school district or the passage or defeat of any public question, subject to the conditions specified in section 2 of P.L.1991, c. 190 (C. 34:11-4.4a); in making afdjakjfdaljd payroll deduction pursuant to this paragraph the administrative expenses incurred by the employer shall be borne by such committee, at the option of the employer.

(10) Payments authorized by employees for employer-sponsored programs for the purchase of insurance or annuities on a group or individual basis, if otherwise permitted by law.

(11) Such other contributions, deductions and payments as the Commissioner of Labor may authorize by regulation as proper and in conformity with the intent and purpose of this act, if such deductions are approved by the employer.

34:11-4.4a**Conditions for withholding or diversion of employee contributions to political committees or continuing political committees**

In the case of contributions withheld or diverted pursuant to paragraph (8) or (9) of subsection b. of section 4 of P.L.1965, c. 173 (C. 34:11-4.4), the contribution shall be withheld or diverted only after compliance with the following conditions:

a. The payroll deduction authorization must be signed by the employee and contain the following explanatory statement:

I recognize that my/any contribution through payroll deduction is completely voluntary and in compliance with State law. It shall be unlawful for any person soliciting an employee for contribution to such a fund to fail to inform such employee of his or her right to refuse to contribute without reprisal.

Any questions relative to compliance with election law may be directed to the Election Law Enforcement Commission, 28 West State Street, Trenton, New Jersey 08625, (609) 292-8700.

b. Any political action committee or continuing political committee which elects to solicit employees under the provisions of section 4 of P.L.1965, c. 173 (C. 34:11-4.4) shall file with the Election Law Enforcement Commission a statement of registration which identifies the title of the committee and the general category of entity or entities, including, but not limited to, business organizations, labor organizations, professional or trade associations, candidates for or holders of public offices, political parties, ideological groups, or civic associations, the interests of which are shared by the leadership, members or financial supporters of the committee.

The statement of registration shall include: (1) the names and mailing addresses of the persons having control over the management of the affairs of the committee; (2) in the case of any person identified under paragraph (1) of this subsection b. who is an individual, the occupation of that individual, and the name and mailing address of the individual's employer, or, in the case of any such entity which is a corporation, partnership, unincorporated association or other organization, the name and mailing address of the organization; and (3) an explanatory statement as to the process utilized for the selection of recipients of funds raised by committee.

c. The political action committee or continuing political committee shall provide space on the payroll deduction authorization document to allow the employee to direct his or her contributions to specific candidates.

d. No employee may elect to contribute more than \$5 per week by means of payroll deduction. No employee may have wages withheld or diverted for more than one political action committee or continuing political committee.

e. No solicitation shall be made for employee contributions on the job or at the workplace.

f. Any political action committee or continuing political committee which elects to solicit employees under the provisions of this act shall annually provide each employee participant with a financial statement indicating disbursement of funds including administrative charges.

34:11-4.5**Death of employee**

a. In the event of the death of an employee all wages due the deceased employee may, upon proper demand on the employer, be paid, in the absence of actual notice of the pendency of probate proceedings, without requiring letters testamentary or of administration in the following order of preference to decedent's:

- (1) surviving spouse,
- (2) children 18 years of age and over in equal shares, or to the guardian of children under 18 years of age,
- (3) father and mother or survivor,
- (4) sisters and brothers,

or to the person who pays the funeral expenses.

b. Payments under subsection a. of this section made after presentation of proof of relationship shall be a release and discharge of the employer to the amount of such payment.

34:11-4.6 Dissemination of information; records

Every employer shall:

- a. Notify his employees at the time of hiring, of the rate of pay, and of the regular payday designated by the employer in accordance with section 2 of this act.
- b. Notify his employees of any changes in the pay rates or paydays prior to the time of such changes.
- c. Furnish each employee with a statement of deductions made from his wages in accordance with section 4 of this act for each pay period such deductions are made.
- d. Keep posted in a place accessible to his employees an abstract of this act furnished by the commissioner, and
- e. Make such records as to the persons employed by him, including wage and hour records and preserve such records for such periods of time, as the commissioner shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this act, provided that records of the number of hours worked shall not be required as to any person employed in a bona fide executive, administrative or professional capacity or in the capacity of outside salesman 18 years of age or older where the wages of such person or persons are not determined by the number of hours worked.

34:11-4.7 Agreements by employer with employee

It shall be unlawful for any employer to enter into or make any agreement with any employee for the payment of wages of any such employee otherwise than as provided in this act, except to pay wages at shorter intervals than as herein provided, or to pay wages in advance. Every agreement made in violation of this section shall be deemed to be null and void, and the penalties in this act provided may be enforced notwithstanding such agreement; and each and every employee with whom any agreement in violation of this section shall be made by any such employer, or the agent or agents thereof, shall have a right of civil action against any such employer for the full amount of his wages in any court of competent jurisdiction in this State.

34:11-4.8 Dispute over amount of wages

a. In case of a dispute over the amount of wages, the employer shall pay, without condition and within the time set by this act, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies to which he might otherwise be entitled, including those provided under this act, as to any balance claimed.

b. The acceptance by an employee of a payment under this section shall not constitute a release as to the balance of his claim and any release required by an employer as a condition to payment shall be in violation of this act and shall be null and void.

34:11-4.9 Administration of act; hearings; investigations; actions for penalties

a. The commissioner shall enforce and administer the provisions of this act and the commissioner or his authorized representatives are empowered to investigate charges of violations of this act.

b. The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees and investigate such facts, conditions or matters as they may deem appropriate to determine whether any person has violated any provision of this act or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

c. The commissioner or his authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the commissioner.

d. If a person fails to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the Superior Court, on application by the commissioner, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

e. The commissioner is authorized to supervise the payment of amounts due to employees pursuant to Article 1 of chapter 11 of Title 34 of the Revised Statutes, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employees, and paid on order of the commissioner directly to the employee or employees affected. The employer shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.). The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

f. The commissioner or his designee is authorized to enter into a reciprocal agreement with the labor department or other corresponding agency of any other state or with a person or body authorized to act on behalf of that agency, for the collection of claims and judgments for wages, administrative fees or penalties based on claims arising in each others' states.

To the extent provided for by the laws of the other state or by any reciprocal agreement entered into with an agency of the other state as provided in this subsection, the commissioner or his designee may: (1) maintain actions in the courts of the other state for the collection of claims and judgments for wages, administrative fees and penalties; and (2) assign the claims and judgments to the agency in the other state for collection.

Upon the written consent of the agency in the other state, or the person or body authorized to act on behalf of that agency, the commissioner or his designee may maintain actions in the courts of this State upon assigned claims and judgments for wages, administrative fees and penalties arising in the other state in the same manner and to the same extent that such actions by the commissioner or his designees are authorized when arising in this State, but only if the other state extends, by law or agreement, a like comity to cases arising in this State.

10. a. Any employer who knowingly fails to pay the full amount of wages to an employee agreed to or required by, or in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), or who knowingly violates any other provision of P.L.1965, c.173 (C.34:11-4.1 et seq.), or who takes a retaliatory action against an employee by discharging or in any other manner discriminating against the employee because the employee has made a complaint to that employee's employer, to the commissioner, or to that employee's authorized representative, that the employer has not paid the employee the full amount of wages agreed upon or required by, and in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to that article or those acts, or because that employee has testified or is about to testify in any proceeding under or relating to that article or those acts, or because the employee has informed any employee of the employer about rights under State laws regarding wages and hours worked, shall be guilty of a disorderly persons offense and, upon conviction for a first violation, shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment and, upon conviction for a second or subsequent violation, be punished by a fine of not less than \$1,000 nor more than \$2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment. Each week, in any day of which any violation of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.) continues shall constitute a separate and distinct offense. In the case of a discharge or other discriminatory action against the employee which is in violation of this subsection, the employer shall also be required to offer reinstatement in employment to the discharged employee and to correct the discriminatory action, and also to pay to the employee, in full, all wages lost as a result of that discharge or discriminatory action, plus liquidated damages equal to not more than 200 percent of the wages due, under penalty of contempt proceedings. Taking an adverse action against an employee within ninety days of the employee filing a complaint with the commissioner or a claim or action being brought by or on behalf of the employee in a court of competent jurisdiction for a violation of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.) shall be considered presumptive evidence that the employer's action was knowingly taken in retaliation against the employee. An employee complaint or other communication need not make explicit reference to any section or provision of any State law regarding wages and hours worked to trigger the protections of this section.

b. As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et seq.), when the Commissioner of Labor and Workforce Development finds that an employer has violated that act, or taken any retaliatory action against the employee in violation of subsection a. of this section, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor and Workforce Development provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999,"

P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

c. If any employer fails to pay the full amount of wages to an employee agreed to or required by, or in the manner required by, the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), the employee may recover in a civil action the full amount of any wages due, or any wages lost because of any retaliatory action taken in violation of subsection a. of this section, plus an amount of liquidated damages equal to not more than 200 percent of the wages lost or of the wages due, together with costs and reasonable attorney's fees as are allowed by the court, except that if there is an agreement of the employee to accept payment of the unpaid wages supervised by the commissioner pursuant to section 9 of P.L.1965, c.173 (C.34:11-4.9) or R.S.34:11-58, the liquidated damages shall be equal to not more than 200 percent of wages that were due prior to the supervised payment. The payment of liquidated damages shall not be required for a first violation by an employer if the employer shows to the satisfaction of the court that the act or omission constituting the violation was an inadvertent error made in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation, and the employer acknowledges that the employer violated the law and pays the amount owed within 30 days of notice of the violation. In a case of retaliation against an employee in violation of the provisions of subsection a. of this section, the employer shall also be required to offer reinstatement in employment to the discharged employee and take other actions as needed to correct the retaliatory action. For purposes of this subsection, an employer taking an adverse action against an employee within ninety days of the employee filing a complaint with the commissioner, or a claim or action being brought by or on behalf of the employee in a court of competent jurisdiction, for a violation of provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.) shall raise a presumption that the employer's action was taken in retaliation against the employee, which presumption may be rebutted only by clear and convincing evidence that the action was taken for other, permissible, reasons. Any agreement by the employee to work for, or accept, wages paid which are less than the amount agreed to or required by law, or paid in a manner other than that required by article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), shall be no defense to the action. The employee shall be entitled to maintain the action for and on behalf of other similarly situated employees, or designate an agent or representative to maintain the action for and on behalf of all similarly situated employees. The employee may bring the action for all appropriate relief, including reinstatement, the payment of damages and the recovery of lost wages or unpaid wages pursuant to this section in the Superior Court. Upon the request of any employee not paid the full wages agreed upon or required by law and in the manner required by the provisions of article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), the commissioner may take an assignment of the wage claim in trust for the assigning employee and may bring any legal action necessary to collect the claim, and the employer shall be required to pay to the employee the unpaid wages and liquidated damages equal to not more than 200 percent of the amount of the unpaid wages and pay to the commissioner the costs and reasonable attorney's fees as determined by the court. The payment of liquidated damages shall not be required for a first violation by an employer if the employer shows to the satisfaction of the court that the act or omission constituting the violation was an inadvertent error made in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation, and the employer acknowledges that the employer violated the law and pays the amount owed within 30 days of notice of the violation.

34:11-4.11 Rules and regulations

The commissioner is authorized to propose and issue, from time to time, rules and regulations to implement the provisions of this act. Such proposed rules and regulations shall be published and made available to the public with notice that the same shall become effective on a specified date, not earlier than 60 days from publication thereof, and that a public hearing on the proposed rule or regulation shall be held

at a place, date and time specified, on a date not earlier than 15 days from the date published copies are made available to the public. At any public hearing held under this section, all interested parties shall have the right to present testimony either orally or in writing, and the commissioner shall consider all testimony offered before promulgating a final rule or regulation.

34:11-4.12 Construction of act

Nothing in this act shall be deemed to require any employer to amend, change, revise or suspend any pay practice, procedure, policy or system that is authorized or permitted under any provision of this act.

34:11-4.13 Repeal

The following sections of the Revised Statutes are repealed: 34:11-4, 34:11-6, 34:11-7, 34:11-23, 34:11-24 and 34:11-27 to 34:11-30, inclusive.

34:11-4.14 Purchase of salary, wages, commissions or other pay for services

a. It shall be unlawful for any person to purchase or have assigned to him, other than by order of court, any salary, wages, commissions, pay or other compensation for services, or any part thereof, due or to become due to any employee and any purchase or assignment, whenever executed, shall be void. It shall also be unlawful for any person to withhold or to pay to any other person on the basis of any assignment or purchase prohibited by this section any salary, wages, commissions, pay or other compensation due to any employee.

b. Any person who violates this section, or attempts to do so, shall be liable to the employee for the amount of the salary, wages, commissions, or other compensation for services withheld from the employee.

c. Nothing contained in this section shall be construed to make unlawful the withholding or diverting of wages by any employer in accordance with section 4 of P.L.1965, c. 173 (C.34:11-4.4).

CHAPTER 11

WAGES

ARTICLE 3. WAGE COLLECTION DIVISION

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34:11-57 **Definitions**

As used in this article:

"Commissioner" means the Commissioner of Labor and Workforce Development or any person or persons in the department designated in writing by him for the purposes of this article.

"Community-based organization" means a public, or nonprofit private, organization funded with public or private funds, or both, that provides services to day laborers, migrant laborers, temporary laborers, low wage workers, or any other type of employee.

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

"Employee" means any natural person who works for another for hire.

"Employer" means any person, partnership, firm or corporation employing another for hire.

"Legal services organization" means a public, or nonprofit private, organization funded with public or private funds, or both, that provides counseling or advice related to wage protection laws, preparation of legal documents, or representation of any person before a court or administrative agency.

"State wage and hour laws" means article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.), and article 3 of chapter 11 of Title 34 of the Revised Statutes (R.S.34:11-57 et seq.), but "State wage and hour laws" do not include the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), or "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

"Wages" means any moneys due an employee from the employer whether payable by the hour, day, week, semimonthly, monthly or yearly and shall include commissions, bonus, piecework compensation and any other benefits arising out of an employment contract.

34:11-58 Investigation of wage claims; testimony; award and judgment

a. An employee may file a claim for wages against an employer under this section or any of the other State wage and hours laws for wages owed related to work performed, including but not limited to wages owed related to unpaid minimum wages, unpaid overtime compensation, wages lost because of unlawful discharge or other discriminatory acts taken in retaliation against the employee, up to six years prior to the date the claim for wages is filed.

b. An employer found to owe an employee wages shall pay the employee the wages owed plus liquidated damages equal to not more than 200% of the wages owed, exclusive of any costs or fees.

c. The commissioner is authorized and empowered to investigate any claim for wages due an employee and in such investigation may summon the defendant, subpoena witnesses, administer oaths, take testimony and shall upon such proceeding make a decision or award when the sum in controversy, exclusive of costs, does not exceed \$50,000.

Such decision or award shall be a judgment when a certified copy thereof is filed with the Superior Court.

Such judgment shall be entered in the same manner and have the same effect and be subject to the same proceedings as are judgments rendered in suits duly heard and determined by courts of competent jurisdiction.

d. Upon an investigation of a wage claim initiated pursuant to this section or any of the other State wage and hours laws, if an employer fails to provide sufficient employee records, as required to be kept under any State wage and hour laws, there shall be a rebuttable presumption that the employee worked for the employer for the period of time and for the amount of wages as alleged in the wage claim. The rebuttable presumption shall not apply to an employer that can demonstrate it does not have sufficient employee records as a result of record destruction due to a natural disaster.

e. The commissioner is authorized to supervise the payment of amounts, including liquidated damages, due to employees under an award made pursuant to this section, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employees, and paid on order of the commissioner directly to the employee or employees affected. The employer shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

f. Upon issuing a decision, under this section or any of the other State wage and hours laws, finding wages due to an employee in an amount equal to or greater than \$5,000, the commissioner shall:

(1) inform the employer that the commissioner may conduct an audit of the employer or any successor firm of the employer pursuant to section 2 of P.L.2009, c.194 (C.34:1A-1.12); and

(2) notify the Division of Taxation in the Department of the Treasury of the decision and may recommend that the division conduct an audit of the employer to ensure the proper withholding and payment of payroll and other taxes by the employer.

g. No payment of an amount of wages owed or related damages, including wages or damages related to retaliation, shall be required under the provisions of this section, or under the provisions of any of the other State wage and hour laws, which results in a violator paying wages owed or damages more than one time for the same violation.

34:11-58.1 Failure of employer to comply

8. a. If an employer fails to comply with a final determination of the commissioner or a judgment of a court, including a small claims court, made under the provisions of State wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40-2), to pay an employee any wages owed or damages awarded within ten days of the time that the determination or judgement requires the payment, the commissioner may do either or both of the following:

(1) issue, in the manner provided in subsection b. of section 2 of P.L.2009, c.194 (C.34:1A-1.12), a written determination directing any appropriate agency to suspend one or more licenses held by the employer or any successor firm of the employer until the employer complies with the determination or judgement; or

(2) issue a stop work order against the violators requiring the cessation of all business operations of the violator. The stop work order may only be issued against the individual or entity found to be in violation, and only as to the specific place of business or employment for which the violation exists. The stop work order shall be effective when served upon the violator or at a place of business or employment by posting a copy of the stop work order in a conspicuous location at the place of business or employment. The stop work order shall remain in effect until the commissioner issues an order releasing the stop work order upon a finding that the violation has been corrected. As a condition of release of a stop-work order under this section, the commissioner may require the employer against whom the stop-work order had been issued to file with the department periodic reports for a probationary period of two years.

b. Stop work orders and any penalties imposed under a stop work order against a corporation, partnership, or sole proprietorship shall be effective against any successor entity that has one or more of the same principals or officers as the corporation, partnership, or sole proprietorship against which the stop work order was issued and that is engaged in the same or equivalent trade or activity.

c. Any employee affected by a stop work order issued pursuant to this section shall be paid by the employer for the first ten days of work lost because of the stop work order.

d. A rebuttable presumption that an employer has established a successor entity shall arise if the two share at least two of the following capacities or characteristics:

- (1) perform similar work within the same geographical area;
- (2) occupy the same premises;
- (3) have the same telephone or fax number;
- (4) have the same email address or Internet website;
- (5) employ substantially the same work force, administrative employees, or both;

- (6) utilize the same tools, facilities, or equipment;
- (7) employ or engage the services of any person or persons involved in the direction or control of the other; or
- (8) list substantially the same work experience.

34:11-58.2 Joint and several liability for client employer and labor contractor; definitions

9. a. A client employer and a labor contractor providing workers to the client employer shall be subject to joint and several liability and shall share civil legal responsibility for any violations of the provisions of State wage and hour laws or violations of the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2) regarding compliance with State wage and hour laws, including provisions regarding retaliatory actions against employees for exercising their rights under any of those laws, and both may be subject to any remedy provided for violations of those laws. A client employer shall not shift to the labor contractor any legal duties or liabilities under the provisions of the “Worker Health and Safety Act,” P.L.1965, c.154 (C.34:6A-1 et seq.) or “The Worker and Community Right to Know Act,” P.L.1983, c.315 (C.34:5A-1 et seq.) with respect to workers supplied by the labor contractor. A waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

b. This section shall not be interpreted as:

(1) imposing individual liability on a homeowner for labor or services received at the home or the owner of a home-based business for labor or services received at the home; or

(2) restricting or limiting the rights of a client employer to recover from a labor contractor any expense to the client employer, or the rights of a labor contractor to recover from a client employer any expense to the labor contractor, resulting from any violation by the labor contractor or client employer of the provisions of State wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40A-2), or restricting or limiting the provisions in contracts between client employers and labor contractors regarding the recovery of expenses pursuant to this paragraph.

c. As used in this section:

“Client employer” means a business entity, regardless of its form, that obtains or is provided workers, directly from a labor contractor or indirectly from a subcontractor, to perform labor or services within its usual course of business.

“Labor contractor” means any individual or entity that supplies, either with or without a contract, directly or indirectly, a client employer with workers to perform labor or services within the client employer’s usual course of business, except that “labor contractor” does not include a bona fide labor organization or apprenticeship program, or a hiring hall operated pursuant to a collective bargaining agreement.

“Usual course of business” means the regular and customary work of a business, performed within or upon the premises or worksite of the client employer, or any other place of business of the client employer for which services or labor are performed.

34:11-58.3 Provision of written copy of statement to employees

10. Each employer shall provide each current employee and each newly hired employee of the employer, a written copy of the statement produced by the department pursuant to section 11 of

P.L.2019, c.212 (C.34:11-58.4) of the employee's rights under the provisions of State wage and hour laws and the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2), with an explanation of how to file a claim or take an action pursuant to those laws.

34:11-58.4 Actions of department supporting enforcement; statement of employee rights

11. The department, for the purpose of supporting the enforcement of the provisions of State wage and hour laws and the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2), may contract with community-based organizations and legal services organizations to disseminate information to day laborers, migrant laborers, temporary laborers, or any other type of employee concerning the protections afforded by State wage and hour laws and section 10 of P.L.1999, c.90 (C.2C:40A-2), and the process by which an individual may take actions under those laws and shall produce, and make available to the public on the website of the department in printable form, a statement of employee rights under the provisions of State wage and hour laws and the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2), with an explanation of how to file a claim or take an action pursuant to those laws.

The contracts entered into between the department and community-based organizations and legal services organizations pursuant to this section shall require that the organizations make all services accessible to persons with limited English proficiency. Any payment made to an organization under a contract shall be regarded as an enforcement and administrative cost of the Division of Workplace Standards of the department.

The department, and any community-based organization or legal services organization contracting with the department pursuant to this section, shall provide any individual seeking assistance to file a complaint or take an action regarding unpaid wages with a description of all of the applicable remedies available to the individual under State wage and hour laws and section 10 of P.L.1999, c.90 (C.2C:40A-2), including the individual's right to obtain liquidated damages, and that that right to damages is waived if the individual agrees to accept payment of the unpaid wages supervised by the commissioner.

34:11-58.5 Annual report; posting of information

12. a. The commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, shall compile and prominently place on a website, maintained by the department and available to the public, an annual report evaluating the effectiveness and efficiency of the enforcement and administration of wage claims and wage collections. The report shall include, but not be limited to:

(1) the number of complaints, investigations, prosecutions, dispositions, and business license suspensions and revocations, the number and amount of penalties, the amount of wages recovered, and the number of workers affected;

(2) an enumeration and description of all community-based and legal services organizations contracted by the department to support the enforcement; and

(3) recommendations for strengthening the implementation and enforcement of P.L.2019, c.212 (C.34:11-58.1 et al.).

b. The commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, shall compile and prominently place on a website, maintained by the department and available to the public, the following information regarding each wage claim in which an employer was found to have been in violation of one or more State wage and hour laws in a final determination by the commissioner or a judgement of a court made during the preceding period of not less than 12 months:

- (1) the name and address of the employer;
- (2) the nature of the claim, including whether it is a claim for one or more of the following: unpaid wages; failure to pay the minimum wage; failure to pay required overtime; or retaliation against an employee in connection with State wage and hour laws;
- (3) the number of affected employees, and the amount of wages found owed; and
- (4) any findings, penalties, and business license suspensions or revocations that resulted from the wage claim.

The information on a claim shall be placed on the website not more than 30 days after the final determination or judgement is made.

34:11-58.6 Crime of pattern of wage nonpayment

13. a. A person commits the crime of pattern of wage nonpayment if the person knowingly commits an act that violates the provisions of N.J.S.2C:40A-2, N.J.S.2C:20-2 if the property stolen consists of compensation the employer failed to provide to an employee as required under the provisions of any State wage and hour law as defined in R.S.34:11-57, subsection a. of section 10 of P.L.1965, c.173 (C.34:11-4.10), or subsection a. of section 25 of P.L.1966, c.113 (C.34:11-56a24), if the person has, on two or more prior occasions, been convicted of a violation of the provisions of any of those laws. It shall not be a defense that the violations were not part of a common plan or scheme, or did not have similar methods of commission.

b. Pattern of wage non-payment is a crime of the third degree, except that the presumption of nonimprisonment set forth in subsection e. of N.J.S.2C:44-1 for persons who have not previously been convicted of an offense shall not apply. Notwithstanding the provisions of N.J.S.2C:1-8 or any other law, a conviction of pattern of wage non-payment shall not merge with a conviction of violation of N.J.S.2C:40A-2, N.J.S.2C:20-2, subsection a. of section 10 of P.L.1965, c.173 (C.34:11-4.10), subsection a. of section 25 of P.L.1966, c.113 (C.34:11-56a24), or any other criminal offense, nor shall such other conviction merge with a conviction under this section.

c. An employer found to be in violation of this section shall be deemed to have caused loss to the employees in the amount by which the employees were paid less than the full wages agreed upon or required by law and shall be subject to the provisions of N.J.S.2C:43-3 regarding fines and restitution to victims and be subject to other pertinent provisions of Title 2C of the New Jersey Statutes, including, but not limited to, N.J.S.2C:43-4, 2C:43-6 and 2C:44-1.

34:11-59 Claim docketed; summons; service

An employee may file a written claim for wages against an employer in the wage collection division of the department which shall be entered in a book to be called the wage collection docket.

Upon the filing of claim, the department shall issue a summons returnable between the hours of nine o'clock in the forenoon and three o'clock in the afternoon, both inclusive, which shall also specify a certain time and place for the appearance of the defendant, not less than five nor more than fifteen days from the date of such process, which summons shall be served at least five days before the time of appearance mentioned therein, by reading the same to the defendant and delivering to him a copy thereof if he shall be found and if not found by leaving a copy thereof in his house or with some other person of his family over the age of fourteen years. Such persons being served with summons and complaint shall be informed of the contents thereof and the person serving the summons shall indorse thereon a return of the time and manner he executed the same, and sign his name thereon. At the time and place specified in the summons,

the commissioner shall inquire in a summary way into the merits of the employee's claim and defenses of the defendant, if any.

34:11-60 Process to run throughout state; by whom served

Process of the wage collection division shall run throughout the state. Service of process shall be made either by a constable or a process server of the department.

34:11-61 Commissioner may administer oaths, take testimony, etc.; process in name of commissioner

The commissioner shall have power to administer oaths, hear testimony and take or cause to be taken depositions of witnesses residing within or without the state. The summonses, subpoenas, and orders to take testimony and for production of documents, emanating from the wage collection division shall issue in the name of the commissioner and under the seal of the department.

34:11-62 Set-off; dismissal where balance due defendant exceeds \$1,000.00

If the defendant files a set-off against the plaintiff for more than \$1,000.00 and at the trial it shall be proved that the balance exceeding \$1,000.00 is due the defendant then suit shall be dismissed unless the defendant consents to accept judgment for \$1,000.00 and costs in full settlement of this claim, but in no event shall a counterclaim for unliquidated damages be set up against plaintiff for wages in the wage collection section.

34:11-63 Appeals; bonds; procedure

From any judgment which may be obtained in the wage collection division, except such as shall be given by confession, either party may, upon filing a notice of appeal with the wage collection division within twenty days after judgment shall be given, appeal to the Superior Court. The appellant shall give a bond in every case, except where the judgment appealed from is partially in his favor and no set-off against his demand has been allowed by the division, or where the court otherwise orders. The bond shall be secured by one sufficient surety, either a freeholder in the county or a surety company authorized to do business in New Jersey, and shall be in double the amount of such judgment or of any off-set allowed by the division, conditioned that the appellant shall prosecute his appeal in the Superior Court, stand to and abide the judgment of the court, and pay such costs as shall be taxed against him if the judgment be affirmed. The wage collection division shall then prepare a transcript of the record to be filed in the Superior Court.

34:11-64 Repealed by L.1991, c. 91, § 533, eff. April 9, 1991

34:11-65 Evidence on appeal

Upon the trial of any appeal either party may produce any witness not produced or sworn in the court below, or any documentary evidence not offered or admitted in the court below, if otherwise legal and competent, without notice to the opposite party.

34:11-66 Jury trial; other remedies

Nothing in this article shall prevent the claimant from instituting an action for his claim in any court of competent jurisdiction or be construed to deny or limit the right of the plaintiff or defendant to a trial by jury. Where either party demands a trial by jury, he shall pay, at least two days before the return date or the adjourned date of hearing of his cause, the statutory jury fee to the wage collection division and thereupon the wage collection division of the department shall file the entire record, in the cause, in the Superior Court, for trial by jury of the issues presented by the claimant and defendant. The jury fee so

received shall be paid to the court wherein the cause is to be tried by the judge and jury. The judgment shall be docketed in the Superior Court as are other judgments of the wage collection division.

34:11-67 Fees and costs

No filing fee shall be charged by the wage collection division, for accepting a wage claim, and no advance fees shall be charged by constables making service of process on wage claims the wage collection division, nor shall any fee be charged by any county clerk for filing of any award or determination of the wage collection division or sheriff for execution and levy but the collection of any wage claim either by execution or otherwise shall carry taxed costs of service, filing, recording fees, executions, and similar items, in accordance with the schedule of costs as prescribed for the Superior Court, Law Division, Special Civil Part. All moneys received by way of taxed costs shall be retained by the wage collection division and at the end of each calendar year shall be paid into the State treasury for the use of the State.

CHAPTER 11

WAGES

ARTICLE 2A. DISCRIMINATION IN WAGES

34:11-56.1.	Definitions
34:11-56.2.	Discrimination in pay based on sex prohibited
34:11-56.3.	Enforcement of act
34:11-56.4.	Inspection of records; obtaining of information
34:11-56.5	Regulations, power to make
34:11-56.6.	Violations of act
34:11-56.7.	Failure to furnish records; interference with commissioner in performance of duties
34:11-56.8.	Actions by or on behalf of employees; damages
34:11-56.9.	Notice of alleged violation; hearing
34:11-56.10.	Partial invalidity
34:11-56.11.	Effective date
34:11-56.12.	Notification to certain employees

34:11-56.1. Definitions

As used in this act:

a. "Employee" includes any person, either male or female, employed by an employer, but shall not include persons performing volunteer service for nonprofit organizations or corporations nor persons employed on a farm, or in domestic service in a private home, or in a hotel.

b. "Employer" includes any person acting directly or indirectly in the interest, or as agent, of an employer in relation to an employee and further includes one or more individuals, partnerships, corporations, associations, legal representatives, trustees, trustees in bankruptcy, or receivers, but such term shall not include nonprofit hospital associations or corporations.

c. "Employ" includes to suffer or permit to work.

d. "Occupation" includes any industry, trade, business or branch thereof, or any employment or class of employment.

"Commissioner" means the Commissioner of Labor and Industry of the State of New Jersey.

34:11-56.2. Discrimination in pay based on sex prohibited

No employer shall discriminate in any way in the rate or method of payment of wages to any employee because of his or her sex. A differential in pay between employees based on a reasonable factor or factors other than sex shall not constitute discrimination within the meaning of this section.

34:11-56.3. Enforcement of act

The Commissioner of Labor and Industry shall have the power and it shall be his duty to carry out and enforce the provisions of this act.

34:11-56.4. Inspection of records; obtaining of information

The commissioner, or his authorized representative, shall have the power to enter the place of employment of any employer to inspect and copy payrolls and other employment records, to compare character of work and skills on which persons employed by the employer are engaged, to question such persons under subpoena, if necessary, and to obtain such other information as is reasonably necessary to the administration and enforcement of this act.

34:11-56.5. Regulations, power to make

The commissioner shall have the power to issue such regulations, not inconsistent with the purpose and provisions of this act, as he deems necessary or appropriate for the efficient administration thereof.

34:11-56.6. Violations of act

Any employer who willfully violates any provision of this act, or who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer, the commissioner, or any other person, or instituted, or caused to be instituted any proceeding under or related to this act, or has testified or is about to testify in any such proceedings, shall be guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of not less than fifty dollars (\$50.00), nor more than two hundred dollars (\$200.00), or by imprisonment for not less than ten days nor more than ninety days, or by both fine and imprisonment.

34:11-56.7. Failure to furnish records; interference with commissioner in performance of duties

Any employer who willfully fails to furnish required records and information to the commissioner upon request, or who falsifies such records or who hinders, delays, or otherwise interferes with the commissioner, or his authorized representative, in the performance of his duties in the enforcement of this act, or refuses such official entry into any place of employment which he is authorized by this act to inspect, shall be guilty of a misdemeanor and, upon conviction be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00).

34:11-56.8. Actions by or on behalf of employees; damages

If any employee, because of his or her employer's violation of the provisions of section two of this act, is discriminated against in the payment of wages, such employee may recover in a civil action the full amount of the salary or wages due from the employer plus an additional equal amount as liquidated damages, together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between such employee and employer to work for less than such salary or wages shall be no defense to the action. At the request of any employee paid less than the wage to which she may be entitled under this act, the commissioner may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, including the liquidated damages provided by this section without cost to the employee. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The commissioner shall not be required to pay the filing fee, or other costs, in connection with such action. The commissioner shall have power to join various claimants against the employer in one cause of action.

34:11-56.9. Notice of alleged violation; hearing

If complaint shall be made to the commissioner, or if he shall have reason to believe that any provision of this act has been violated, he may cause notice of such alleged violation to be given to the alleged violator, giving the party so notified the opportunity to answer such complaint. The alleged violator shall be given

an opportunity, at his request, to be heard with regard to such alleged violation, under such rules and regulations as may be prescribed by the commissioner provided that the complaining party and all interested persons shall be notified of such hearing and given an opportunity to be present. If, as the result of such hearing, it shall appear that the purposes of this act may be served and any violation corrected without the institution of any prosecution, the commissioner shall not be obligated to institute any prosecution for any such violation.

34:11-56.10. Partial invalidity

The provisions of this act shall be construed as severable and if any part be held unconstitutional, or for any other reason invalid, the remaining parts shall not be affected thereby.

34:11-56.11. Effective date

This act shall take effect July first, one thousand nine hundred and fifty-two.

34:11-56.12. Notification to certain employees

1. a. Every employer in this State, with 50 or more employees, shall conspicuously post notification, in a place or places accessible to all workers in each of the employer's workplaces, in a form issued by regulation promulgated by the Commissioner of Labor and Workforce Development, detailing the right to be free of gender inequity or bias in pay, compensation, benefits or other terms or conditions of employment under the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), P.L.1952, c.9 (C.34:11-56.1 et seq.), Title VII of the Civil Rights Act of 1964, Pub.L. 88-352 (42 U.S.C. s.2000e et seq.), and the Equal Pay Act of 1963, Pub.L. 88-38 (29 U.S.C. s.206(d)), which prohibit wage or compensation discrimination based on gender.

b. The employer shall provide each worker of the employer with a written copy of the notification: not later than 30 days after the form of the notification is issued by the commissioner; at the time of the worker's hiring, if the worker is hired after the issuance; annually, on or before December 31 of each year; and at any time, upon the first request of the worker. The employer shall make the written copy of the notification available to each worker:

(1) By email delivery;

(2) Via printed material, including, but not limited to, a pay check insert, brochure or similar informational packet provided to new hires, an attachment to an employee manual or policy book, or flyer distributed at an employee meeting; or

(3) Through an Internet or Intranet website, if the site is for the exclusive use of all workers, can be accessed by all workers, and the employer provides notice to the workers of its posting.

The notification provided by the employer pursuant to this subsection shall contain an acknowledgement that the worker has received the notification and has read and understands its terms. The acknowledgement shall be signed by the worker, in writing or by means of electronic verification, and returned to the employer within 30 days of its receipt.

c. The commissioner shall make the notification required by this section available in English, Spanish, and any other language that the commissioner determines is the first language of a significant number of workers in the State. This determination shall be, at the discretion of the commissioner, based on the numerical percentages of all workers in the State for whom English or Spanish is not a first language or in a manner consistent with any regulations promulgated by the commissioner for this purpose. The employer shall post and provide the notification in English, Spanish, and any other language for which the

commissioner has made the notification available and which the employer reasonably believes is the first language of a significant number of the employer's workforce.

CHAPTER 1A

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

AN ACT concerning the suspension or revocation of certain employer licenses for repeated violations of laws regarding wages, benefits and taxes.

- 34:1A-1.11 Definitions relative to suspension, revocation of certain employer licenses
- 34:1A-1.12 Commissioner's actions relative to employer violations
- 34:1A-1.13 Presumption of successor firm
- 34:1A-1.14 Notification of employer responsibility relative to record maintenance

34:1A-1.11 Definitions relative to suspension, revocation of certain employer licenses

1. As used in this act:

"Agency" means any agency, department, board or commission of this State, or of any political subdivision of this State, that issues a license for purposes of operating a business in this State.

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

"License" means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this State, and includes, but is not limited to:

(1) A certificate of incorporation pursuant to the "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq.;

(2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.;

(3) A statement of qualification or a statement of foreign qualification pursuant to the "Uniform Partnership Act (1996)," P.L.2000, c.161 (C.42:1A-1 et al.);

(4) A certificate of limited partnership or a certificate of authority pursuant to the "Uniform Limited Partnership Law (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

(5) A certificate of formation or certified registration pursuant to the "New Jersey Limited Liability Company Act," P.L.1993, c.210 (C.42:2B-1 et seq.); and

(6) Any license, certificate, permit or registration pursuant to R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.); section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

"State wage, benefit and tax laws" means:

(1) P.L.1965, c.173 (C.34:11-4.1 et seq.);

(2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.);

(3) The "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.);

- (4) The workers' compensation law, R.S.34:15-1 et seq.;
- (5) The "unemployment compensation law," R.S.43:21-1 et seq.;
- (6) The "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);
- (7) P.L.2008, c.17 (C.43:21-39.1 et al.); and
- (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

34:1A-1.12 Commissioner's actions relative to employer violations

2. a. (1) If the commissioner determines that an employer has failed, for one or more of its employees, to maintain and report every record regarding wages, benefits and taxes which the employer is required to maintain and report pursuant to State wage, benefit and tax laws, as defined in section 1 of this act, and has, in connection with that failure to maintain or report the records, failed to pay wages, benefits, taxes or other contributions or assessments as required by those laws, the commissioner shall, as an alternative to, or in addition to, any other actions taken in the enforcement of those laws, notify the employer of the determination and have an audit of the employer and any successor firm of the employer conducted not more than 12 months after the determination.

(2) If the commissioner is notified pursuant to subsection g. of this section of a conviction of an employer, the commissioner shall, as an alternative to, or in addition to, any other actions taken in the enforcement of the laws violated by the employer, have an audit of the employer and any successor firm of the employer conducted not more than 12 months after receipt of the notification.

b. If, in an audit conducted pursuant to subsection a. of this section, the commissioner determines that the employer or any successor firm to the employer has continued in its failure to maintain or report records as required by those laws or continued in its failure to pay wages, benefits, taxes or other contributions or assessments as required by those laws, or if the commissioner is notified pursuant to subsection g. of this section of a conviction of the employer and the offense resulting in the conviction occurred subsequent to an audit conducted pursuant to subsection a. of this section, the commissioner:

(1) May, after affording the employer or successor firm notice and an opportunity for a hearing in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), issue a written determination directing any appropriate agency to suspend any one or more licenses that are held by the employer or successor firm, for a period of time determined by the commissioner. In determining the length of a suspension, the commissioner shall consider any of the following factors which are relevant:

- (a) The number of employees for which the employer or successor firm failed to maintain or report required records and pay required wages, benefits, taxes or other contributions or assessments;
- (b) The total amount of wages, benefits, taxes or other contributions or assessments not paid by the employer or successor firm;
- (c) Any other harm resulting from the violation;
- (d) Whether the employer or successor firm made good faith efforts to comply with any applicable requirements;
- (e) The duration of the violation;

- (f) The role of the directors, officers or principals of the employer or successor firm in the violation;
- (g) Any prior misconduct by the employer or successor firm; and
- (h) Any other factors the commissioner considers relevant; and

(2) Shall conduct a subsequent audit or inspection of the employer or any successor firm of the employer not more than 12 months after the date of the commissioner's written determination.

c. If, in the subsequent audit or inspection conducted pursuant to subsection b. of this section, the commissioner determines that the employer or successor firm has continued in its failure to maintain or report records as required pursuant to State wage, benefit and tax laws, as defined in section 1 of this act, and continued in its failure to pay wages, benefits, taxes or other contributions or assessments as required by those laws, or if the commissioner is notified pursuant to subsection g. of this section of a conviction of the employer for an offense occurring after the audit conducted pursuant to subsection b. of this section, the commissioner, after affording the employer or successor firm notice and an opportunity for a hearing in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall issue a written determination directing any appropriate agency to permanently revoke any one or more licenses that are held by the employer or any successor firm to the employer and that are necessary to operate the employer or successor firm.

d. Upon receipt of any written determination of the commissioner directing an agency to suspend or revoke a license pursuant to this section, and notwithstanding any other law, the agency shall immediately suspend or revoke the license.

e. In instances where an employee leasing company has entered into an employee leasing agreement with a client company pursuant to P.L.2001, c.260 (C.34:8-67 et seq.), any written determination by the commissioner directing agencies to suspend an employer license pursuant to subsection b. of this section, or revoke an employer license pursuant to subsection c. of this section, for a failure or continued failure to keep records regarding, and to pay, wages, benefits and taxes pursuant to State wage, benefit and tax laws, shall be for the suspension or revocation of the licenses of the client company and not the licenses of the employee leasing company if the commissioner determines that the failure or continued failure was caused by incomplete, inaccurate, misleading, or false information provided to the employee leasing company by the client company. Nothing in this subsection shall be construed as diminishing or limiting the authority or obligation of the commissioner to rescind the registration of an employee leasing company pursuant to the provisions of section 10 of P.L.2001, c.260 (C.34:8-76).

f. If, in the course of an audit or inspection conducted pursuant to this section, the commissioner discovers that an employee of the employer or of any successor firm of the employer has failed to provide compensation to the employee as required under any of the State wage and hour laws as defined in R.S.34:11-57, then the commissioner shall initiate a wage claim on behalf of the employee pursuant to R.S.34:11-58.

g. Upon the conviction of an employer under subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2), section 13 of P.L.2019, c.212 (C.34:11-58.6), subsection a. of section 10 of P.L.1965, c.173 (C.34:11-4.10), subsection a. of section 25 of P.L.1966, c.113 (C.34:11-56a24), or N.J.S.2C:20-2 if the property stolen consists of compensation the employer failed to provide to an employee under any State wage and hour law as defined in R.S.34:11-57, the prosecutor or the court shall notify the commissioner of the employer's conviction.

34:1A-1.13 Presumption of successor firm

3. A rebuttable presumption that an employer has established a successor firm shall arise if the two parties share two or more of the following capacities or characteristics:

- a. Performing similar work within the same geographical area;
- b. Occupying the same premises;
- c. Having the same telephone or fax number;
- d. Having the same e-mail address or Internet website;
- e. Employing substantially the same work force, administrative employees, or both;
- f. Utilizing the same tools, equipment or facilities;
- g. Employing or engaging the services of any person or persons involved in the direction or control of the other; or
- h. Listing substantially the same work experience.

34:1A-1.14 Notification of employer responsibility relative to record maintenance

4. a. Each employer which is required to maintain and report records regarding wages, benefits, taxes and other contributions and assessments pursuant to State wage, benefit and tax laws, as defined in section 1 of this act, shall conspicuously post notification, in a place or places accessible to all employees in each of the employer's workplaces, in a form issued by regulation adopted by the commissioner, of the obligation of the employer to maintain and report those records. The employer shall also provide each employee a written copy of the notification not later than 30 days after the form of the notification is issued, or, if the employee is hired after the issuance, at the time of the employee's hiring. In adopting the regulation regarding the notification requirement, the commissioner shall, to the greatest extent practicable, design the notification in a manner which coordinates or consolidates the notification with any other notifications required pursuant to State wage, benefit and tax laws, as defined in section 1 of this act. The notification shall also provide information on how an employee or the employee's authorized representative, may contact, by telephone, mail and e-mail, a representative of the commissioner to provide information to, or file a complaint with, the representative regarding possible violations of the requirements of this act or any State wage, benefit and tax law, as defined in section 1 of this act, or may obtain information about any actual violation, including any audit undertaken pursuant to this act.

b. No employer shall discharge or in any other manner discriminate against an employee because the employee has made an inquiry or complaint to his employer, to the commissioner or to his authorized representative regarding any possible violation by the employer of the provisions of this act or any State wage, benefit and tax laws, as defined in section 1 of this act, or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act or those laws, or because the employee has testified or is about to testify in the proceeding.

c. Any employer who violates any provision of this section shall be guilty of a disorderly persons offense and shall, upon conviction, be fined not less than \$100 nor more than \$1,000. In the case of a discharge or other discriminatory action in violation of this section, the employer shall also be required to offer reinstatement in employment to the discharged employee and to correct any discriminatory action, and to pay to the employee all reasonable legal costs of the action, all wages and benefits lost as a result of the discharge or discriminatory action, plus punitive damages equal to two times the lost wages and benefits, under penalty of contempt proceedings for failure to comply with the requirement.

CHAPTER 11

WAGES

ARTICLE 2B. WAGES ON PUBLIC WORKS

This law – the State Building Service Contracts Act – should not be confused with the “Prevailing Wage Act” N.J.S.A. 34:11-56.25 et seq., that applies to construction-related public works contracts performed by construction workers.

- 34:11-56.58. Prevailing wage levels for employees furnishing State building services.
- 34:11-56.59. Definitions relative to prevailing wage levels for employees furnishing State building services.
- 34:11-56.60. Contract to contain provision for prevailing wage, building services rates.
- 34:11-56.61. Record of employee wages, benefits.
- 34:11-56.62. Civil action to recover prevailing wage for building services.
- 34:11-56.63. Authority of commissioner.
- 34:11-56.64. Violations; fines, penalties.
- 34:11-56.65. Alternative, additional sanctions.
- 34:11-56.66. Retaliation against complaining employer, disorderly persons offense.
- 34:11-56.67. Collective bargaining rights unaffected.
- 34:11-56.68. Severability.
- 34:11-56.69. Rules, regulations.
- 34:11-56.70. Special license authorizing employment at less than prevailing wage for building service rates.

34:11-56.58. Prevailing wage levels for employees furnishing State building services.

It is declared to be the public policy of this State to establish prevailing wage levels for the employees of contractors and subcontractors furnishing building services for any property or premises owned or leased by the State in order to safeguard the efficiency and general wellbeing of those employees and to protect them and their employers from the effects of serious and unfair competition based on low wage levels which are detrimental to efficiency and well-being.

34:11-56.59. Definitions relative to prevailing wage levels for employees furnishing State building services.

As used in this act:

"Commissioner" means the Commissioner of Labor and Workforce Development or the commissioner's duly authorized representatives.

"Building services" means any cleaning or building maintenance work, including but not limited to sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, engineering, securing, patrolling, or other work in connection with the care, securing, or maintenance of an existing building, except that "building services" shall not include any maintenance work or other public work for which a contractor is required to pay the "prevailing wage" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

"Leased by the State" means that not less than 55% of the property or premises is leased by the State, provided that the portion of the property or premises that is leased by the State measures more than 20,000 square feet.

"Prevailing wage for building services" means the wage and benefit rates designated by the commissioner based on the determinations made by the General Services Administration pursuant to the federal "Service Contract Act of 1965" (41 U.S.C. s.351 et seq.), for the appropriate localities and classifications of building service employees.

"The State" means the State of New Jersey and all of its departments, bureaus, boards, commissions, agencies and instrumentalities, including any State institutions of higher education, but does not include political subdivisions.

"State institutions of higher education," means Rutgers, The State University of New Jersey, the University of Medicine and Dentistry of New Jersey and the New Jersey Institute of Technology, and any of the State colleges or universities established pursuant to chapter 64 of Title 18A of the New Jersey Statutes, but does not include any county college established pursuant to chapter 64A of Title 18A of the New Jersey Statutes.

34:11-56.60. Contract to contain provision for prevailing wage, building services rates.

Every contract to furnish building services for any property or premises owned or leased by the State shall contain a provision stating the prevailing wage for building services rates that are applicable to the workers employed in the performance of the contract and shall contain a stipulation that those workers shall be paid not less than the indicated prevailing wage for building services rates. The contract shall provide for annual adjustments of the prevailing wage for building services during the term of the contract, and shall provide that if it is found that any worker employed by the contractor or any subcontractor covered by the contract, has been paid less than the required prevailing wage, the State Treasurer may terminate the contractor or subcontractor's right to proceed with the work, and the contractor and his sureties shall be liable to the State for any excess costs occasioned by the termination.

34:11-56.61. Record of employee wages, benefits.

Each contractor and subcontractor shall keep an accurate record showing the name, classification, and actual hourly rate of wages and any benefits paid to each worker employed by him to perform building services pursuant to a State contract or subcontract, and shall preserve those records for two years after the date of payment. The record shall be open at all reasonable hours to inspection by the Director of the Division of Purchase and Property and the commissioner.

34:11-56.62. Civil action to recover prevailing wage for building services.

Any worker paid less than the prevailing wage for building services to which the worker is entitled by the provisions of this act may recover in a civil action the full amount of the prevailing wage for building services less any amount actually paid to the worker by the employer together with any costs and reasonable attorney's fees allowed by the court, and an agreement between the worker and the employer to work for less than the prevailing wage for building services shall not be a defense to the action. The worker shall be entitled to maintain an action for and on behalf of the worker or other workers similarly situated and the worker or workers may designate an agent or representative to maintain such actions for and on behalf of all workers similarly situated. At the request of any worker paid less than the prevailing wage for building services required under the provisions of this act, the commissioner may take an assignment of the wage claim in trust for the assigning worker or workers and may bring any legal action necessary to collect the claim, and the employer shall be required to pay any costs and such reasonable attorney's fee as are allowed by the court.

34:11-56.63. Authority of commissioner.

The commissioner shall have the authority to:

- a. investigate and ascertain the wages of any employees of a contractor or subcontractor furnishing building services for any property or premises owned or leased by the State;
- b. enter and inspect the place of business or employment of any contractor or subcontractor furnishing building services for any property or premises owned or leased by the State, for the purpose of examining and inspecting any or all books, registers, payrolls, and other records of any such contractor or subcontractor that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment of any employees of such contractor or subcontractor; copy any or all of such books, registers, payrolls, and other records as the commissioner may deem necessary or appropriate; and question the employees of such contractor or subcontractor for the purpose of ascertaining whether the provisions of this act have been and are being complied with;
- c. require from such contractor or subcontractor full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and other information pertaining to the contractor or subcontractor's workers and their employment as the commissioner may deem necessary or appropriate; and
- d. require any contractor or subcontractor to file, within 10 days of receipt of a request, any records enumerated in subsections b. and c. of this section, sworn as to their validity and accuracy, If the contractor or subcontractor fails to provide the requested records within 10 days, the State Treasurer may immediately withhold from payment to the employer up to 25% of the amount, not to exceed \$100,000, to be paid to the employer under the terms of the contract pursuant to which the building services work is being performed. The amount withheld shall be immediately released upon receipt by the State Treasurer of a notice from the commissioner indicating that the request for records has been satisfied.

34:11-56.64. Violations; fines, penalties.

Any contractor or subcontractor who willfully hinders or delays the commissioner in the performance of the commissioner's duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in any day of which a worker is paid less than the rate applicable to that worker under this act and each worker so paid, shall constitute a separate offense.

As an alternative to or in addition to any other sanctions provided by law for violations of any provision of this act, if the commissioner finds that a contractor or subcontractor has violated the act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the contractor or subcontractor, the seriousness of the violation, the good faith of the contractor or subcontractor and the size of the contractor's or subcontractor's business. No administrative penalty shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an

opportunity to request a hearing before the commissioner or the commissioner's designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty shall be due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

34:11-56.65. Alternative, additional sanctions.

As an alternative to any other sanctions or in addition thereto, herein or otherwise provided by law for violation of this act, the commissioner is authorized to supervise the payment of amounts due to workers under this act, and the contractor or subcontractor may be required to make these payments to the commissioner to be held in a special account in trust for the workers, and paid on order of the commissioner directly to the worker or workers affected. The contractor or subcontractor shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). The fee shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

34:11-56.66. Retaliation against complaining employer, disorderly persons offense.

Any contractor or subcontractor who discharges or in any other manner discriminates against any worker because the worker has made any complaint to the worker's employer, to the State Treasurer or to the commissioner that the worker has not been paid wages in accordance with the provisions of this act, or because the worker has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because the worker has testified or is about to testify in any such proceeding shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100 nor more than \$1,000.

As an alternative to or in addition to any other sanctions provided by law for violations of any provision of this act, if the commissioner finds that a contractor or subcontractor has violated the act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the contractor or subcontractor, the seriousness of the violation, the good faith of the contractor or subcontractor and the size of the contractor's or subcontractor's business. No administrative penalty shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or the commissioner's designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty shall be due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty

pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

34:11-56.67. Collective bargaining rights unaffected.

Nothing in this act shall be deemed to interfere with, impede, or in any way diminish the right of workers to bargain collectively through representatives of their own choosing in order to establish wages in excess of any applicable minimum under this act.

34:11-56.68. Severability.

If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application thereof, to other persons or circumstances shall not be affected thereby.

34:11-56.69. Rules, regulations.

The commissioner is hereby authorized and empowered to prescribe, adopt, promulgate, rescind and enforce rules and regulations as may be required for the administration and enforcement of the provisions of this act.

34:11-56.70. Special license authorizing employment at less than prevailing wage for building service rates.

For any occupation for which prevailing wage for building services rates are established by or pursuant to this act, the commissioner or the Director of Wage and Hour Compliance in the Department of Labor and Workforce Development may cause to be issued to any employee, including a learner, apprentice, or student, whose earning capacity is impaired by age or physical or developmental disability or injury, a special license authorizing employment at wages less than the prevailing wage for building services for a period of time as shall be fixed by the commissioner or the Director of Wage and Hour Compliance and stated in the license. Nothing in this section is intended to undermine the purposes of this act.

This act shall take effect on the 60th day following enactment and apply to contracts entered or renewed on or after that date.^[1]

^[1]This act was approved on January 12, 2006. It will take effect on March 13, 2006.

CHAPTER 20

CONSTRUCTION INDUSTRY INDEPENDENT CONTRACTOR ACT

34:20-1	Short title
34:20-2	Findings, declarations relative to classification of construction employees
34:20-3	Definitions relative to classification of construction employees
34:20-4	Certain services deemed employment; exceptions
34:20-5	Improper classification of construction employees, degree of offense, crime; penalties
34:20-6	Penalty for knowingly improperly classifying construction employee; debarment
34:20-7	Suspension of contractor's registration; notification, hearing, appeal; stop-work order, civil penalty for continued violation
34:20-7.1	Determination of compliance; subpoena; stop-work order
34:20-8	Improper classification of construction worker, civil action by employee
34:20-9	Discrimination, retaliation prohibited
34:20-10	Severability
34:20-11	Rules, regulations

34:20-1 Short title

This act shall be known and may be cited as the "Construction Industry Independent Contractor Act."

34:20-2 Findings, declarations relative to classification of construction employees

The Legislature finds that employers in the construction industry who improperly classify employees as independent contractors deprive these workers of proper Social Security benefits and other benefits, while reducing the employers' State and federal tax withholdings and related obligations. Moreover, this practice puts businesses that bear higher costs for complying with the law at a competitive disadvantage.

34:20-3 Definitions relative to classification of construction employees

For purposes of this act:

"Employer" means a partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who is primarily engaged in the business of, or enters into a contract for, making improvements to real property and includes any subcontractor or lower tier contractor.

"Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"Public work" means construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract:

(a) Not less than 55% of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and

(b) The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

34:20-4 Certain services deemed employment; exceptions

For purposes of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the "unemployment compensation law," R.S.43:21-1 et seq., the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or other applicable State tax laws, P.L.1965, c.173 (C.34:11-4.1 et seq.) and the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), services performed in the making of improvements to real property by an individual for remuneration paid by an employer shall be deemed to be employment unless and until it is shown to the satisfaction of the Department of Labor and Workforce Development that:

- a. the individual has been and will continue to be free from control or direction over the performance of that service, both under his contract of service and in fact; and
- b. the service is either outside the usual course of the business for which the service is performed, or the service is performed outside of all the places of business of the employer for which the service is performed; and
- c. the individual is customarily engaged in an independently established trade, occupation, profession or business.

The failure to withhold federal or State income taxes or to pay unemployment compensation contributions or workers' compensation premiums with respect to an individual's wages shall not be considered in making a determination under this section.

34:20-5 Improper classification of construction employees, degree of offense, crime; penalties

a. An employer, or any officer, agent, superintendent, foreman, or employee of the employer who fails to properly classify an individual as an employee in accordance with section 4 of this act, for purposes of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the "unemployment compensation law," R.S.43:21-1 et seq., the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., P.L.1965, c.173 (C.34:11-4.1 et seq.) or other applicable State tax laws, and the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), and fails to pay wages, benefits, taxes or other contributions required by any of those acts, shall be:

(1) Guilty of a disorderly persons offense and shall, upon conviction, be fined not less than \$100 nor more than \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or both. Each week, in any day of which an employee is misclassified and each employee so misclassified, shall constitute a separate offense.

(2) If the failure is done knowingly, guilty of a crime of the second degree if the contract amount is for \$75,000 or above; guilty of a crime of the third degree if the contract amount exceeds \$2,500, but is less than \$75,000; and guilty of a crime of the fourth degree if the contract amount is for \$2,500 or less. In addition, the violator shall be deemed to have caused loss to the employees in any amount by which the employees were underpaid in connection with the misclassification and shall be subject to the provisions of N.J.S.2C:43-3 regarding fines and restitution to victims and be subject to other pertinent provisions of Title 2C of the New Jersey Statutes, including, but not limited to, N.J.S.2C:43-4, 2C:43-6 and 2C:44-1.

b. As an alternative to or in addition to any other sanctions provided by law for violations of any provision of this act, when the Commissioner of Labor and Workforce Development finds that an employer has violated this act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$2,500 for a first violation and up to a maximum of \$5,000 for each subsequent violation, specified in a schedule of penalties to be promulgated by regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor and Workforce Development provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon that hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

c. Any sum collected as a penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

d. When the Commissioner of Labor and Workforce Development finds that the employer has violated provisions of this act, the commissioner may refer the matter to the Attorney General or his designee for investigation and prosecution. Nothing in this subsection shall be deemed to limit the authority of the Attorney General to investigate and prosecute violations of the New Jersey Code of Criminal Justice, nor to limit the commissioner's ability to refer any matter for criminal investigation or prosecution.

e. A complaint or indictment under the provisions of subsection a. or subsection d. of this section may be brought in Superior Court in accordance with the Rules of Court of the State of New Jersey.

**34:20-6 Penalty for knowingly improperly classifying construction employee;
debarment**

If the Commissioner of Labor and Workforce Development determines, after investigation, that an employer or any officer, agent, superintendent, foreman, or employee of the employer has knowingly failed to properly classify an individual as an employee in accordance with section 4 of this act and failed to pay required wages, benefits, taxes or other contributions, or if a final conviction and disposition of a violation of this act is made pursuant to section 5 of this act in which the violator is found to be guilty of a crime of the second, third or fourth degree, then the commissioner shall place the employer on a list of employers who are prohibited from contracting, directly or indirectly, with any public body for the construction of any public building or other public work projects, or from performing any work on the same, for a period of three years. The commissioner shall give notice by mail of that list to any public body who shall request the commissioner so to do.

In the case of a determination by the commissioner, if the person responsible denies that a failure to properly classify an employee has occurred, he shall have the right to apply to the commissioner for a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), which shall be afforded and a decision shall be rendered within 48 hours of the request for a hearing. The commissioner may bring an action in Superior Court to enjoin or invalidate any contract award made in violation of this section.

Suspension of contractor's registration; notification, hearing, appeal; stop-work order, civil penalty for continued violation

a. If the Commissioner of Labor and Workforce Development determines, after investigation, that an employer failed to properly classify an individual as an employee in accordance with section 4 of this act, the commissioner may order the immediate suspension of a contractor's registration issued pursuant to section 7 of P.L.1999, c.238 (C.34:11-56.54), if the commissioner also determines that ordering an immediate suspension is in the public interest, and provided that the contractor is afforded an opportunity to contest the immediate suspension in the following manner:

(1) The commissioner shall notify the contractor in writing of the immediate revocation and the contractor's rights under this subsection.

(2) The contractor may notify the commissioner of its request for an opportunity to be heard and contest the immediate suspension in writing within 72 hours of its receipt of immediate suspension notification.

(3) Within seven business days of receipt of the notification from the contractor pursuant to paragraph (2) of this subsection, the commissioner shall grant the contractor a hearing to contest the immediate suspension. The commissioner shall permit the contractor to present evidence at the hearing.

(4) The commissioner shall issue a written decision within five business days of the hearing either upholding or reversing the contractor's immediate suspension. The decision shall include the grounds for upholding or reversing the contractor's immediate suspension.

(5) If the contractor disagrees with the written decision, the contractor may appeal the decision to the commissioner, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. If the commissioner orders the immediate suspension of a contractor's registration pursuant to subsection a. of this section, the violation shall have no effect on the registration of any contractor or subcontractor, regardless of tier, in the contractual chain with the suspended contractor.

c. For a second violation of the provisions of this act, the commissioner shall issue a stop-work order requiring the cessation of all business operations at every site at which the violation occurred within 72 hours of that determination. The order shall take effect when served upon the employer, or, for a particular employer worksite, when served at that worksite. The order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has properly classified the individual as an employee and has paid any penalty assessed under this section. As a condition of release from a stop-work order, the commissioner may require an employer who is found to have failed to properly classify an individual as an employee to file with the department periodic reports for a probationary period that shall not exceed two years that demonstrate the employer's continued compliance with this section. The department shall promulgate rules and regulations to determine filing times and report requirements.

d. For a third or any subsequent violation of the provisions of this act, the commissioner shall issue a stop-work order requiring the cessation of all business operations of the violator within 72 hours of that determination. The order shall take effect when served upon the employer. The order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has properly classified the individual as an employee and has paid any penalty assessed under this section. As a condition of release from a stop-work order, the commissioner may require an employer who is found to have failed to properly classify an individual as an employee, to file with the department periodic reports for a probationary period that shall not exceed two years that demonstrate the employer's continued compliance with this section. The department shall promulgate rules and regulations to determine filing times and report requirements.

e. Stop-work orders and penalty assessment orders issued pursuant to this section against an employer shall be in effect against any successor corporation or business entity that has one or more of the same principals or officers as the employer against whom the stop-work order was issued and which is engaged in the same or equivalent trade or activity.

f. The commissioner may assess a civil penalty of \$5,000 per day against an employer for each day that it conducts business operations that are in violation of a stop-work order issued pursuant to this section.

g. In addition to any other penalties provided for in this section, the commissioner may assess against an employer a civil penalty of \$5,000 for each individual who the employer failed to properly classify as an employee.

h. If the employer denies that a failure to properly classify an employee has occurred, the employer shall have the right to apply to the commissioner to request a hearing, which shall be afforded and a decision rendered within 48 hours of the request for the hearing.

i. The penalty shall be collected by the commissioner in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

34 :20-7.1 Determination of compliance; subpoena; stop-work order

2. a. The Commissioner of Labor and Workforce Development and any agent of the commissioner, upon receipt of a complaint or through a routine investigation for a violation of any wage and hour law or R.S.34:15-79, or a failure to meet obligations as provided in R.S.43:21-7 and R.S.43:21-14, is authorized to enter, during usual business hours, the place of business or employment of any employer of the individual to determine compliance with the wage and hour laws, R.S.34:15-79, R.S.43:21-7, or R.S.43:21-14, and for that purpose may examine payroll and other records and interview employees, call hearings, administer oaths, take testimony under oath and take depositions.

b. The commissioner may issue subpoenas for the attendance of witnesses and the production of books and records. Any employer or agent of the employer who willfully fails to furnish time and wage records as required by law to the commissioner or agent of the commissioner upon request, or who refuses to admit the commissioner or agent to the place of employment of the employer, or who hinders or delays the commissioner or agent in the performance of duties in the enforcement of this section, may be fined not less than \$1,000 and shall be guilty of a disorderly persons offense. Each day of the failure to furnish the time and wage records to the commissioner or agent shall constitute a separate offense, and each day of refusal to admit, of hindering, or of delaying the commissioner or agent shall constitute a separate offense.

c. (1) If the commissioner determines, after either an initial determination as a result of an audit of a business or an investigation pursuant to subsection a. of this section, that an employer is in violation of any wage and hour law or of R.S.34:15-79, or has failed to meet obligations as provided in R.S.43:21-7 or R.S.43:21-14, the commissioner may issue a stop-work order against the employer requiring cessation of all business operations of the employer at the specific place of business or employment in which the violation exists. The stop-work order may be issued only against the employer found to be in violation or non-compliance. If a stop-work order has been issued against a subcontractor pursuant to this subsection, the general contractor shall retain the right to terminate the subcontractor from the project. The order shall be effective when served upon the employer at the place of business or, for a particular employer worksite, when served at that worksite. The order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has come into compliance and has paid any penalty deemed to be satisfactory to the commissioner, or after the commissioner determines, in a hearing held pursuant to paragraph (2) of this subsection, that the employer did not commit the act on which the order was based. The stop-work order shall be effective against any successor entity engaged in the same or equivalent trade or activity that has one or more of the same principals or officers as the corporation, partnership or sole proprietorship against which the stop-work order was issued.

(2) An employer who is subject to a stop-work order shall have the right to appeal to the commissioner. The contractor may notify the Director of the Division of Wage and Hour Compliance of its request for an opportunity to be heard and contest the stop work order in writing within 72 hours of its receipt of the notification.

Within seven business days of receipt of the notification from the contractor, the director shall hold a hearing to allow the contractor to contest the issuance of a stop work order. The director shall permit the contractor to present evidence at the hearing. If the director fails to hold a hearing within seven business days of receipt of the notification from the contractor, an administrative law judge shall have the authority to release the stop-work order.

The director shall issue a written decision within five business days of the hearing either upholding or reversing the contractor's stop work order. The decision shall include the grounds for upholding or reversing the contractor's stop work order.

If the contractor disagrees with the written decision, the contractor may appeal the decision to the commissioner, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

(3) As an alternative to issuing a stop-work order in accordance with paragraph (1) of this subsection, if the commissioner determines, after an investigation pursuant to subsection a. of this section, that an employer is in violation of R.S.34:15-79, the commissioner may provide and transfer all details and materials related to the investigation under this section to the Director of the Division of Workers' Compensation for any enforcement of penalties or stop-work orders the director determines are appropriate.

34:20-8 Improper classification of construction worker, civil action by employee

a. No employer shall require or request that any individual enter into an agreement or sign a document which results in the misclassification of the individual as an independent contractor or otherwise does not accurately reflect the employment relationship with the employer.

b. An individual employed as a construction worker who has not been properly classified as an employee may bring a civil action for damages against the employer or any other employer who was in contract with the employee, for failing to properly classify the employee if the employer had knowledge of the misclassification. An individual representative, including a labor organization, may bring the action on behalf of the individual or as a class action. The court may award attorneys fees and other costs of the action in addition to damages to an individual or class of individuals who have not been properly classified as employees in accordance with section 4 of this act.

34:20-9 Discrimination, retaliation prohibited

It shall be unlawful for an employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this act. Rights protected under this act include, but are not limited to: the right to file a complaint or inform any person about an employer's noncompliance with this act; the right to inform any person of his potential rights and to assist him in asserting those rights. Any person who in good faith alleges noncompliance with this act shall be afforded the rights provided by this act, notwithstanding his failure on the merits. Taking adverse action against a person within 90 days of the person's exercise of rights protected under this act shall raise a rebuttable presumption of having done so in retaliation for the exercise of those rights.

34:20-10**Severability**

The provisions of this act shall be deemed to be severable and if any section, subsection, paragraph, sentence or other part of this act is declared to be unconstitutional, or the applicability thereof to any person is held invalid, the remainder of this act shall not thereby be deemed to be unconstitutional or invalid.

34:20-11**Rules, regulations**

The commissioner shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), make and promulgate rules and regulations necessary to implement the purposes of this act.

CHAPTER 11A

FRINGE BENEFITS

PART II. HEALTH BENEFITS

- 34:11A-16. Findings, declarations relative to notification with regard to health benefits plans
- 34:11A-17. Notice by employer of termination, change of benefits
- 34:11A-18. Violations, penalties
- 34:11A-19. Regulations

34:11A-16. Findings, declarations relative to notification with regard to health benefits plans

The Legislature finds and declares that:

- a. Many employers in this State offer health benefits coverage to their employees under a health benefits plan as an incentive to attract and retain qualified employees.
- b. Health benefits coverage is very important to employees and their families and the availability of such coverage through an employer can be the determining factor as to whether an individual accepts employment with a particular employer.
- c. According to data tabulated by the Urban Institute based on the 1999 National Survey of America's Families, approximately 5.5 million New Jersey residents, which includes employees and their dependents, were covered by an employer-sponsored health benefits plan in 1999.
- d. In certain instances, an employer may make a business decision not to continue an employee health benefits plan, due to rising health care costs and other economic factors, and may not always notify the employees beforehand of its decision.
- e. It is a disservice to the working people of this State not to require that an employer provide prior notification to its employees when the employee health benefits plan will be terminated, for whatever reason.

34:11A-17. Notice by employer of termination, change of benefits

An employer that provides a health benefits plan as defined in section 2 of P.L.1997, c.192 (C.26:2S 2) to its employees in this State shall provide, in writing, 30 days' prior notice to those employees before the health benefits plan is terminated; except that, in the case of an employer that changes a health benefits plan, the employer shall immediately notify its employees in writing of the change upon receipt by the employer of notification from the health insurer that its employees will be covered by the new plan.

34:11A-18. Violations, penalties

The Commissioner of Labor shall enforce and administer the provisions of sections 1 through 4 of this act, and the commissioner or his authorized representatives are empowered to investigate violations of those provisions.

- b. When the commissioner finds that an employer has violated this act by failing to provide the notice required pursuant to section 2 of this act, the commissioner is authorized to assess and collect administrative penalties specified in a schedule of penalties to be promulgated by the commissioner by regulation. The

penalty amount shall be based on the number of employees covered under the health benefits plan and shall not exceed \$200 an employee.

c. No administrative penalty shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon that hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order.

d. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

34:11A-19. Regulations

The Commissioner of Labor shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the provisions of sections 1 through 4 of this act.

TITLE 17B-INSURANCE

CHAPTER 30

17B:30-40. Definitions, construction, regulations on notice of premium increase to employers.

17B:30-40. Definitions, construction, regulations on notice of premium increase to employers

a. As used in this section:

"Carrier" means any entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the Commissioner of Banking and Insurance, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company authorized to issue health insurance, a health maintenance organization, a hospital service corporation, medical service corporation and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services. The term "carrier" shall not include a joint insurance fund established pursuant to State law.

"Health benefits plan" means a health benefits plan as defined in section 2 of P.L.1997, c.192 (C.26:2S-2).

b. For the renewal of a health benefits plan for which the premium rate will increase, a carrier shall provide, in writing, 60 days' prior notice of the amount of the increase, to the employer that purchased that plan.

c. The provisions of this section shall not be construed to diminish the right of a carrier to negotiate with an employer that purchased a health benefits plan over the amount of any proposed increase in the premium rate for the renewal of that plan.

d. The Commissioner of Banking and Insurance shall promulgate regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the provisions of this section.

CHAPTER 8B

EMPLOYMENT ADVERTISEMENTS

- 34:8B-1 Provisions prohibited in advertisements for job vacancies
34:8B-2 Violations, penalties

34:8B-1 Provisions prohibited in advertisements for job vacancies

1. Unless otherwise permitted by the provisions of Title 11A of the New Jersey Statutes or any other law, rule or regulation, no employer or employer's agent, representative, or designee shall knowingly or purposefully publish, in print or on the Internet, an advertisement for any job vacancy in this State that contains one or more of the following:

- a. Any provision stating that the qualifications for a job include current employment;
- b. Any provision stating that the employer or employer's agent, representative, or designee will not consider or review an application for employment submitted by any job applicant currently unemployed;
or
- c. Any provision stating that the employer or employer's agent, representative, or designee will only consider or review applications for employment submitted by job applicants who are currently employed.

Nothing set forth in this section shall be construed as prohibiting an employer or employer's agent, representative, or designee from publishing, in print or on the Internet, an advertisement for any job vacancy in this State that contains any provision setting forth any other qualifications for a job, as permitted by law, including, but not limited to, the holding of a current and valid professional or occupational license, certificate, registration, permit or other credential, or a minimum level of education, training or professional, occupational or field experience.

In addition, nothing set forth in this section shall be construed as prohibiting an employer or employer's agent, representative, or designee from publishing, in print or on the Internet, an advertisement for any job vacancy that contains any provision stating that only applicants who are currently employed by such employer will be considered.

34:8B-2 Violations, penalties

2. a. Any employer who violates this act shall be subject to a civil penalty in an amount not to exceed \$1,000 for the first violation, \$5,000 for the second violation and \$10,000 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

b. Nothing set forth in this act shall be construed as creating, establishing or authorizing a private cause of action by an aggrieved person against an employer who has violated, or is alleged to have violated, the provisions of this act.

CHAPTER 11

WAGES

34:11-68 Records required relative to collection, transportation of solid waste

34:11-68. Records required relative to collection, transportation of solid waste

1. a. Every contract with a public body under which a contractor or subcontractor engages in the work of the collection or transportation of solid waste, including any recyclable materials other than recycled or reclaimed asphalt or concrete, for the public body shall contain a provision requiring the contractor and subcontractor to keep an accurate record showing the name, the actual hourly rate of wages paid to, and the actual daily, overtime and weekly hours worked by, each individual engaged in the collection and transportation work done under the contract, and any other records deemed necessary by the commissioner for the enforcement of wage payments, and the records shall be preserved for two years from the date of payment. The record shall be open at all reasonable hours to the inspection of the public body awarding the contract, any other party to the contract, and the commissioner, and the contractor or subcontractor shall submit a certified payroll record showing only the name, the actual hourly rate of wages paid to, and the actual daily, overtime and weekly hours worked by each individual engaged in the collection and transportation work done under the contract, in a form satisfactory to the commissioner, to the public body for each payroll period not more than 10 days after the payment of wages. The public body shall make the certified payroll record open at all reasonable hours to the inspection of any party to the contract, the commissioner, and any member of the public.

b. With respect to any contract with a public body for the collection or transportation of solid waste, including any recyclable materials other than recycled or reclaimed asphalt or concrete, the commissioner shall have the authority to investigate and ascertain the wages of workers employed in connection with the contract, enter and inspect the place of business or employment of the workers to question the workers and examine, inspect and copy any books, registers, payrolls, and other records regarding the wages, hours, and other conditions of employment of the workers, require from the contractor or subcontractor written statements, including sworn statements, regarding wages, hours, names, addresses, and other information about the workers the commissioner deems appropriate, and require the contractor or subcontractor to file, within 10 days of receipt of a request, any records enumerated in this section, sworn to as to their validity and accuracy. If the contractor or subcontractor fails to provide the requested records within 10 days, the commissioner may direct within 15 days the fiscal or financial officer charged with the custody and disbursements of the funds of the public body which contracted for the work to withhold immediately from payment to the contractor or subcontractor up to 25% of the amount, not to exceed \$100,000, to be paid to the contractor or subcontractor under the terms of the contract. The amount withheld shall be immediately released upon receipt by the public body of a notice from the commissioner indicating that the request for records has been satisfied.

c. Any contractor or subcontractor who willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this section, or fails to make, keep or preserve any records required under the provisions of this act, or falsifies any of the records, or refuses to furnish or make available any of the records to the commissioner upon demand, otherwise violates any provision of this act or any regulation or order issued under this act, shall be guilty of a disorderly persons offense and shall, upon conviction, be subject to a fine of not less than \$100 nor more than \$1,000, imprisonment for not less than 10 nor more than 90 days, or by both the fine and imprisonment. As an alternative to or in addition to any other sanctions, if the commissioner finds that the contractor or subcontractor has violated this act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$2,500 for a first violation and up to a maximum of \$5,000 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the

"Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors including the history of previous violations, the seriousness of the violation, the good faith of the contractor or subcontractor and the size of the business. No administrative penalty shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administrative costs of the Division of Wage and Hour Compliance in the Department of Labor and Workforce Development.

d. For the purposes of this section:

"Commissioner" means the Commissioner of Labor and Workforce Development or his duly authorized representatives.

"Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"Contractor" or "subcontractor" means a contractor or subcontractor who employs less than 1,000 employees in the State of New Jersey

CHAPTER 11

WAGES

ARTICLE 1. REGULATION IN GENERAL

- 34:11-24.1. Medical examinations requested by employers; imposition of cost on employees prohibited
- 34:11-24.2. Penalty for violation

34:11-24.1. Medical examinations requested by employers; imposition of cost on employees prohibited

No employer or prospective employer shall deduct from the wages of any employee or from the wages to be paid to a prospective employee any sum, or in any manner require payment of any sum from such employee or prospective employee, to defray the cost of any medical examination of such employee or prospective employee when such examination is made at the request or direction of the employer, by a physician designated by said employer, as a condition of entering or continuing employment, and in the event that the employee or prospective employee pays for any such medical examination, the employer or prospective employer shall reimburse the employee or prospective employee for the amount of any such payment.

34:11-24.2. Penalty for violation

Every person who shall violate any of the provisions of this act shall be liable to a penalty of one hundred dollars (\$100.00), to be recovered by and in the name of the Department of Labor and Industry for the use of the State.

CHAPTER 2

CHILD AND FEMALE LABOR; MERCANTILE ESTABLISHMENTS

ARTICLE 3. FEMALE LABOR

- 34:2-29. Seats to be provided
- 34:2-30. Inspections
- 34:2-30.1. Penalty; notice to offender

34:2-29. Seats to be provided

Every employer of one or more employees in any manufacturing, mechanical or mercantile establishment or in the services and operations incident to any commercial employment shall provide and maintain suitable seats conveniently situated and shall permit the use of such seats by employees at all times except when necessarily engaged in the discharge of duties that cannot properly be performed in a sitting position.

34:2-30. Inspections

The commissioner shall see that the provisions of R.S. 34:2-29 of this title are carried out in all mercantile establishments, and shall, at reasonable intervals, examine and inspect all such mercantile establishments to see that the seats required to be provided by R.S. 34:2-29 are fully maintained and that employees are permitted to use them freely and without hindrance.

34:2-30.1. Penalty; notice to offender

Any individual, firm or corporation owning or managing an establishment of the kind mentioned in section 34:2-29 of this title, who shall fail to comply with the requirements of said section 34:2-29 within ten days after the date on which notice to do so has been served by the commissioner or one of his deputies shall be liable to a penalty of twenty-five dollars for each offense, and a failure to comply within the period of ten days, with such repetition of such notice as may be necessary, shall each constitute a separate offense.

TITLE 2C – THE NEW JERSEY CODE OF CRIMINAL JUSTICE

CHAPTER 40A

- 2C.40A-1. Employer requiring lie detector test
- 2C.40A-2. Violation of contract to pay employees

2C:40A-1. Employer requiring lie detector test

Any person who as an employer shall influence, request or require an employee or prospective employee to take or submit to a lie detector test as a condition of employment or continued employment, commits a disorderly persons offense. The provisions of this section shall not apply if: (1) the employer is authorized to manufacture, distribute or dispense controlled dangerous substances pursuant to the provisions of the “New Jersey Controlled Dangerous Substances Act,” P.L.1970, c. 226 (C. 24:21-1 et seq.); (2) the employee or prospective employee is or will be directly involved in the manufacture, distribution, or dispensing of, or has or will have access to, legally distributed controlled dangerous substances; and (3) the test, which shall cover a period of time no greater than 5 years preceding the test, and except as provided in this section, shall be limited to the work of the employee or prospective employee and the individual's improper handling, use or illegal sale of legally distributed controlled dangerous substances.

The test may include standard baseline questions necessary and for the sole purpose of establishing a normal test pattern. Any employee or prospective employee who is required to take a lie detector test as a precondition of employment or continued employment shall have the right to be represented by legal counsel. A copy of the report containing the results of a lie detector test shall be in writing and be provided, upon request, to the individual who has taken the test. Information obtained from the test shall not be released to any other employer or person. The employee or prospective employee shall be informed of his right to present to the employer the results of an independently administered second lie detector examination prior to any personnel decision being made in his behalf by the employer.

2C:40A-2. Violation of contract to pay employees

a. An employer who has agreed with an employee or with a bargaining agent for employees to pay wages, compensation or benefits to or for the benefit of employees commits a disorderly persons offense if the employer:

- (1) fails to pay wages when due; or
- (2) fails to pay compensation or benefits within 30 days after due.

b. If a corporate employer violates subsection a., any officer or employee of the corporation who is responsible for the violation commits a disorderly persons offense.

TITLE 34

CHAPTER 6B

ELECTRONIC COMMUNICATIONS DEVICES

- 34:6B-5 Definitions relative to disclosure of personal information for certain electronic communications devices
- 34:6B-6 Prohibited actions by employers
- 34:6B-7 Waiver, limitation of protection prohibited
- 34:6B-8 Retaliation, discrimination prohibited
- 34:6B-9 Violations, penalties
- 34:6B-10 Construction of act

34:6B-5 Definitions relative to disclosure of personal information for certain electronic communications devices

For purposes of this act:

"Electronic communications device" means any device that uses electronic signals to create, transmit, and receive information, including a computer, telephone, personal digital assistant, or other similar device.

"Employer" means an employer or employer's agent, representative, or designee. The term "employer" does not include the Department of Corrections, State Parole Board, county corrections departments, or any State or local law enforcement agency.

"Personal account" means an account, service or profile on a social networking website that is used by a current or prospective employee exclusively for personal communications unrelated to any business purposes of the employer. This definition shall not apply to any account, service or profile created, maintained, used or accessed by a current or prospective employee for business purposes of the employer or to engage in business related communications.

"Social networking website" means an Internet-based service that allows individuals to construct a public or semi-public profile within a bounded system created by the service, create a list of other users with whom they share a connection within the system, and view and navigate their list of connections and those made by others within the system.

34:6B-6 Prohibited actions by employers

No employer shall require or request a current or prospective employee to provide or disclose any user name or password, or in any way provide the employer access to, a personal account through an electronic communications device.

34:6B-7 Waiver, limitation of protection prohibited

No employer shall require an individual to waive or limit any protection granted under this act as a condition of applying for or receiving an offer of employment. An agreement to waive any right or protection under this act is against the public policy of this State and is void and unenforceable.

34:6B-8 Retaliation, discrimination prohibited

No employer shall retaliate or discriminate against an individual because the individual has done or was about to do any of the following:

- a. Refuse to provide or disclose any user name or password, or in any way provide access to, a personal account through an electronic communications device;
- b. Report an alleged violation of this act to the Commissioner of Labor and Workforce Development;
- c. Testify, assist, or participate in any investigation, proceeding, or action concerning a violation of this act; or
- d. Otherwise oppose a violation of this act.

34:6B-9 Violations, penalties

An employer who violates any provision of this act shall be subject to a civil penalty in an amount not to exceed \$1,000 for the first violation and \$2,500 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

34:6B-10 Construction of act

- a. Nothing in this act shall be construed to prevent an employer from complying with the requirements of State or federal statutes, rules or regulations, case law or rules of self-regulatory organizations.
- b. Nothing in this act shall prevent an employer from implementing and enforcing a policy pertaining to the use of an employer issued electronic communications device or any accounts or services provided by the employer or that the employee uses for business purposes.
- c. Nothing in this act shall prevent an employer from conducting an investigation:
 - (1) for the purpose of ensuring compliance with applicable laws, regulatory requirements or prohibitions against work-related employee misconduct based on the receipt of specific information about activity on a personal account by an employee; or
 - (2) of an employee's actions based on the receipt of specific information about the unauthorized transfer of an employer's proprietary information, confidential information or financial data to a personal account by an employee.
- d. Nothing in this act shall prevent an employer from viewing, accessing, or utilizing information about a current or prospective employee that can be obtained in the public domain.

TITLE 34

CHAPTER 6B

THE OPPORTUNITY TO COMPETE ACT – *Effective March 1, 2015*

34:6B-11	Short title
34:6B-12	Findings, declarations relative to certain employment rights of persons with criminal records.
34:6B-13	Definitions relative to certain employment rights of persons with criminal records.
34:6B-14	Prohibited actions by employer during initial employment application process.
34:6B-15	Prohibitions relative to employer advertisements.
34:6B-16	Exceptions to prohibited actions by employers.
34:6B-17	Criminal histories relative to employment with local government.
34:6B-18	Penalties sole remedy; construction of act.
34:6B-19	Violations, penalties.

34:6B-11 **Short title**

1. This act shall be known and may be cited as "The Opportunity to Compete Act."

34:6B-12 **Findings, declarations relative to certain employment rights of persons with criminal records.**

2. The Legislature finds and declares that:

- a. Removing obstacles to employment for people with criminal records provides economic and social opportunities to a large group of people living in New Jersey, increasing the productivity, health, and safety of New Jersey communities.

- b. Criminal background checks by employers have increased dramatically in recent years, with estimates of 90 percent of large employers in the United States now conducting background checks as part of the hiring process.

- c. Barriers to employment based on criminal records stand to affect an estimated 65 million adults in the United States with criminal records.

- d. Employment advertisements in New Jersey frequently include language regarding criminal records that either explicitly precludes or strongly dissuades people from applying.

- e. Individuals with criminal records represent a group of job seekers ready and able to contribute and add to the workforce.

- f. Securing employment significantly reduces the risk of recidivism for persons with criminal records.

- g. Currently, at least 64 states, counties, and cities have enacted or passed statutes, ordinances, or policies to remove barriers to the employment of persons with criminal histories by public and private employers.

h. The nation's largest public employer, the United States government, and the nation's largest private employer have each implemented their own policies removing barriers to the employment of persons with criminal histories.

i. Numerous other major businesses and organizations have voluntarily implemented their own policies removing barriers to the employment of those with criminal histories.

j. It is the intent and purpose of "The Opportunity to Compete Act" to improve the economic viability, health, and security of New Jersey communities and to assist people with criminal records to reintegrate into the community, become productive members of the workforce, and to provide for their families and themselves.

34:6B-13 Definitions relative to certain employment rights of persons with criminal records.

3. As used in this act:

"Advertisement" means any circulation, mailing, posting, or any other form of publication, utilizing any media, promoting an employer or intending to alert its audience, regardless of size, to the availability of any position of employment.

"Applicant for employment" means any person whom an employer considers when identifying potential employees, through any means, including, but not limited to, recruitment, solicitation, or seeking personal information, or any person who requests to be considered for employment by an employer, or who requests information from an employer related to seeking employment, and shall include any person who currently is an employee of the employer.

"Criminal record" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, release or conviction, including, but not limited to, any sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of probation, or a sentence of conditional discharge.

"Employee" shall mean a person who is hired for a wage, salary, fee, or payment to perform work for an employer, but excludes any person employed in the domestic service of any family or person at the person's home, any independent contractors, or any directors or trustees. The term also shall include interns and apprentices.

"Employer" means any person, company, corporation, firm, labor organization, or association which has 15 or more employees over 20 calendar weeks and does business, employs persons, or takes applications for employment within this State, including the State, any county or municipality, or any instrumentality thereof. The term shall include job placement and referral agencies and other employment agencies, but excludes the United States or any of its departments, agencies, boards, or commissions, or any employee or agent thereof.

"Employment" means any occupation, vocation, job, or work with pay, including temporary or seasonal work, contingent work, and work through the services of a temporary or other employment agency; any form of vocational apprenticeship; or any internship. The physical location of the prospective employment shall be in whole, or substantial part, within this State.

"Employment application" means a form, questionnaire or similar document or collection of documents that an applicant for employment is required by an employer to complete.

"Initial employment application process" means the period beginning when an applicant for employment first makes an inquiry to an employer about a prospective employment position or job vacancy or when an employer first makes any inquiry to an applicant for employment about a prospective employment position or job vacancy, and ending when an employer has conducted a first interview, whether in person or by any other means of an applicant for employment.

34:6B-14 Prohibited actions by employer during initial employment application process.

4. a. Except as otherwise provided in section 6 of this act:

(1) An employer shall not require an applicant for employment to complete any employment application that makes any inquiries regarding an applicant's criminal record during the initial employment application process.

(2) An employer shall not make any oral or written inquiry regarding an applicant's criminal record during the initial employment application process.

b. Notwithstanding the provisions of subsection a. of this section, if an applicant discloses any information regarding the applicant's criminal record, by voluntary oral or written disclosure, during the initial employment application process, the employer may make inquiries regarding the applicant's criminal record during the initial employment application process.

c. Nothing set forth in this section shall be construed to prohibit an employer from requiring an applicant for employment to complete an employment application that makes any inquiries regarding an applicant's criminal record after the initial employment application process has concluded or from making any oral or written inquiries regarding an applicant's criminal record after the initial employment application process has concluded. The provisions of this section shall not preclude an employer from refusing to hire an applicant for employment based upon the applicant's criminal record, unless the criminal record or relevant portion thereof has been expunged or erased through executive pardon, provided that such refusal is consistent with other applicable laws, rules and regulations.

34:6B-15 Prohibitions relative to employer advertisements.

5. Unless otherwise permitted or required by law, an employer shall not knowingly or purposefully publish, or cause to be published, any advertisement that solicits applicants for employment where that advertisement explicitly provides that the employer will not consider any applicant who has been arrested or convicted of one or more crimes or offenses. The provisions of this section shall not apply to any advertisement that solicits applicants for a position in law enforcement, corrections, the judiciary, homeland security, or emergency management, or any other employment position where a criminal history record background check is required by law, rule or regulation, or where an arrest or conviction by the person for one or more crimes or offenses would or may preclude the person from holding such employment as required by any law, rule or regulation, or where any law, rule, or regulation restricts an employer's ability to engage in specified business activities based on the criminal records of its employees. Nothing set forth in this section shall be construed as prohibiting an employer from publishing, or causing to be published, an advertisement that contains any provision setting forth any other qualifications for employment, as permitted by law, including, but not limited to, the holding of a current and valid professional or occupational license, certificate, registration, permit or other credential, or a minimum level of education, training or professional, occupational, or field experience

34:6B-16 Exceptions to prohibited actions by employers.

6. The provisions of subsection a. of section 4 of this act shall not prohibit an employer from requiring an applicant for employment to complete an employment application that makes any inquiries regarding an

applicant's criminal record during the initial employment application process or from making any oral or written inquiries regarding an applicant's criminal record during the initial employment application process if:

a. The employment sought or being considered is for a position in law enforcement, corrections, the judiciary, homeland security or emergency management;

b. The employment sought or being considered is for a position where a criminal history record background check is required by law, rule or regulation, or where an arrest or conviction by the person for one or more crimes or offenses would or may preclude the person from holding such employment as required by any law, rule or regulation, or where any law, rule, or regulation restricts an employer's ability to engage in specified business activities based on the criminal records of its employees; or

c. The employment sought or being considered is for a position designated by the employer to be part of a program or systematic effort designed predominantly or exclusively to encourage the employment of persons who have been arrested or convicted of one or more crimes or offenses.

34:6B-17 Criminal histories relative to employment with local government.

7. a The governing body of a county or municipality shall not adopt any ordinance, resolution, law, rule or regulation regarding criminal histories in the employment context, except for ordinances adopted to regulate municipal operations.

b. The provisions of this act shall preempt any ordinance, resolution, law, rule or regulation adopted by the governing body of a county or municipality prior to the effective date of this act regarding criminal histories in the employment context, except for ordinances adopted to regulate municipal operations.

34:6B-18 Penalties sole remedy; construction of act.

8. The penalties set forth in section 9 of this act shall be the sole remedy provided for violations of this act. Nothing set forth in this act shall be construed as creating or establishing a standard of care or duty for employers with respect to any law other than this act. Evidence that an employer has violated, or is alleged to have violated, the provisions of this act, shall not be admissible in any legal proceeding with respect to any law or claim other than a proceeding to enforce the provisions of this act. Nothing set forth in this act shall be construed as creating, establishing or authorizing a private cause of action by an aggrieved person against an employer who has violated, or is alleged to have violated, the provisions of this act

34:6B-19 Violations, penalties.

9. Any employer who violates this act shall be liable for a civil penalty in an amount not to exceed \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation collectible by the Commissioner of Labor and Workforce Development in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

**SELECTED
NEW JERSEY STATE
LABOR REGULATIONS**

N.J.A.C. 12:55	Wage Payments
N.J.A.C. 12:61	Wage Collection
N.J.A.C. 12:2	Notification
N.J.A.C. 12:64	Prevailing Wages for Building Services
N.J.A.C. 12:65	Construction Industry Independent Contractor Act Rules
N.J.A.C. 12:63	Notification Concerning Health Benefits Plans
N.J.A.C. 12:67	Prohibited Discrimination Against Unemployed Individuals
N.J.A.C. 12:68	Opportunity to Compete Rules

CHAPTER 55
WAGE PAYMENTS

**SUBCHAPTER 1. GENERAL PROVISIONS; VIOLATIONS; FEES AND PENALTIES;
HEARINGS**

- 12:55-1.1 Purpose and scope
- 12:55-1.2 Definitions
- 12:55-1.3 Powers of the Commissioner
- 12:55-1.4 Violation; punishment
- 12:55-1.5 Administrative fee
- 12:55-1.6 Administrative penalty
- 12:55-1.7 Interest
- 12:55-1.8 Hearings

SUBCHAPTER 2. PAYROLL DEDUCTIONS

- 12:55-2.1 Payroll deductions; general
- 12:55-2.2 Payroll deductions for mass transportation commuter tickets
- 12:55-2.3 Voluntary wage deduction for repayment of financial obligations to the State of New Jersey
- 12:55-2.4 Time and mode of payment
- 12:55-2.5 Withholding of income tax for foreign jurisdictions

**SUBCHAPTER 1. GENERAL PROVISIONS; VIOLATIONS; FEES AND PENALTIES;
HEARINGS**

12:55:1.1 Purpose and scope

(a) The purpose of this chapter is to establish rules to effectuate N.J.S.A. 34:11-41 et seq., an act regarding the payment of wages.

(b) The chapter is applicable to:

1. Wages and hours subject to the Act;
2. Wages paid to an employee for services rendered; and
3. Time and mode of payment.

(c) This chapter shall not apply to:

1. Volunteers; or
2. Patients.

12:55-1.2 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. 34:11-4.1 et seq., an act regarding the payment of wages.

"Check-deposit-return fee" means a charge which results from a payroll check having been returned due to insufficient or uncollected funds.

“Commissioner” means the Commissioner of Labor and Workforce Development or his or her designee.

"Direct deposit" means payment of the wages of an employee by causing the amount of such employee's wages to be deposited in an account or accounts maintained in a financial institution or financial institutions in the name of the employee.

“Employee” means any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees.

“Employer” means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State. For the purposes of the Act and this chapter, the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.

"Financial institution" means any State-chartered or Federally-chartered institution authorized to accept deposits in New Jersey.

“Mass transportation” means railroads operated by steam, electricity or other power, rapid transit lines and ferries, buses or other vehicles which possess a certificate of public convenience and necessity issued by the New Jersey Department of Transportation.

"Payroll debit card" means a magnetically encoded card issued by a financial institution, which provides an employee with the means of obtaining the full amount of all wages earned in a pay period in a form that is equivalent to payment in lawful money of the United States, payment by check or payment by direct deposit.

“Wages” means the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto.

12:55-1.3 Powers of the Commissioner

(a) The Commissioner shall enforce and administer the provisions of the Act and the Commissioner or his or her authorized representatives are empowered to investigate charges of violations of the Act.

(b) The Commissioner or his or her authorized representatives are empowered to enter and inspect such places, question such employees and investigate such facts, conditions or matters as they may deem appropriate to determine whether any person has violated any provision of the Act or this chapter or which may aid in the enforcement of the provisions of the Act or this chapter.

(c) The Commissioner or his or her authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the Commissioner.

(d) If a person fails to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of the Superior Court, on application by the Commissioner, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(e) The Commissioner is authorized to supervise the payment of amounts due to employees pursuant to Article 1 of chapter 11 of Title 34 of the Revised Statutes, and the employer may be required to make these payments to the Commissioner to be held in a special account in trust for the employees, and paid on order of the Commissioner directly to the employee or employees affected. The employer shall also pay the Commissioner an administrative fee equal to not less than 10 percent or more than 25 percent of any payment made to the Commissioner pursuant to this section. The amount of the administrative fee is specified in N.J.A.C. 12:55-1.5. The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

12:55-1.4 Violation; punishment

Any employer who knowingly and willfully violates any provision of P.L. 1965, c.173 (N.J.S.A. 34:11-4.1 et seq.) shall be guilty of a disorderly persons offense and, upon conviction for a violation, shall be punished by a fine of not less than \$100.00 nor more than \$1,000. Each day during which any violation of the Act continues shall constitute a separate and distinct offense.

12:55-1.5 Administrative fee

(a) The employer shall pay the Commissioner an administrative fee on all payments of gross amounts due employees pursuant to N.J.S.A. 34:11-4.1 et seq.

(b) A schedule of fees is as follows:

1. First violation...10 percent of the amount due the employee;
2. Second violation...18 percent of the amount due the employee;
3. Third and subsequent violations...25 percent of the amount due the employee.

(c) All payments shall be made payable to the Commissioner of Labor and Workforce Development Wage Payment Trust Fund by certified check or money order, or in the form suitable to the Commissioner of Labor and Workforce Development.

12:55-1.6 Administrative penalty

(a) As an alternative or in addition to any other sanctions provided for in N.J.S.A. 34:11-4.1 et seq. 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 \$250.00;
2. Second and subsequent violations...not less than \$25.00 nor more than \$500.00.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail 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 working days following the receipt of the notice.

1. The notice shall become the Final Order upon the expiration of the 15 working day period following receipt of the notice if a hearing is not requested.

2. If a hearing is requested the Commissioner shall issue a Final Order upon such hearing and a finding that the violation has occurred.

3. All fees and penalties shall be paid within 30 days of the Final Order. Failure to pay such fees and/or penalty shall result in a Judgment being obtained in a court of competent jurisdiction.

4. All payments shall be payable to the Commissioner of Labor and Workforce Development Wage Payment Trust Fund in the form of a certified check or money order, or such other form suitable to the Commissioner of Labor and Workforce Development.

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:

1. The seriousness of the violations;
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 to be appropriate in the determining of the penalty assessed.

12:55-1.7 Interest

(a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:

1. When an employer has unreasonably delayed compliance with an order of the Commissioner to pay wages owed to an employee;
2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the employer over an extensive period of time; or
3. Where the Commissioner finds sufficient cause based on the particular case.

(b) Where applicable, interest deemed owed to an employee shall be calculated at the annual rate as set forth in New Jersey Court Rules, 4:42-11.

12:55-1.8 Hearings

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:55-1.6, the employer shall have the right to a hearing under (b) below.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and

the amount of the penalty and an opportunity to request a formal hearing. A request for formal hearing must be received within 15 working days following the receipt of the notice. All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

(e) Recipients of an administrative penalty assessment may request the initiation of a settlement conference at the time that a hearing request is made.

(f) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his or her designee may, for good cause shown, re-schedule a hearing.

(g) If the Commissioner or his or her designee does not authorize such a re-scheduled hearing, then the Commissioner shall issue a final agency determination effective upon the date set for the original hearing.

(h) Payment of the penalty is due when a final agency determination is issued.

(i) Upon final order the penalty imposed may be recovered with cost in a summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

SUBCHAPTER 2. PAYROLL DEDUCTIONS

12:55-2.1 Payroll deductions; general

(a) No employer may withhold or divert any portion of any portion of an employee's wages unless:

1. The employer is required or empowered to do so by New Jersey or United States law; or

2. The amounts withheld or diverted are for:

i. Contributions authorized either in writing by employees, or under a collective bargaining agreement, to employee welfare, insurance, hospitalization, medical or surgical or both, pension, retirement, and profit-sharing plans, and to plans establishing individual retirement annuities on a group or individual basis, as defined by section 408(b) of the Federal Internal Revenue Code of 1954 as amended (26 U.S.C. 408(b)), or individual retirement accounts at any State or Federally chartered bank, savings bank, or savings and loan association, as defined by section 408(a) of the Federal Internal Revenue Code of 1954, as amended (26 U.S.C. 408(a)), for the employee, his or her spouse or both.

ii. Contributions authorized either in writing by employees, or under a collective bargaining agreement, for payment into company-operated thrift plans; or security option or security purchase plans to buy securities of the employing corporation, an affiliated corporation, or other corporations at market price or less, provided such securities are listed on a stock exchange or are marketable over the counter.

iii. Payments authorized by employees for payment into employee personal savings accounts, such as payments to a credit union, savings fund society, savings and loan or building and loan association; and payments to banks for Christmas, vacation, or other savings funds; provided all such deductions are approved by the employer.

iv. Payments for company products purchased in accordance with a periodic payment schedule contained in the original purchase agreement; payments for employer loans to employees, in accordance with a periodic payment schedule contained in the original loan agreement; payments for safety equipment; payments for the purchase of United State Government bonds; and payments to correct payroll errors; provided all such deductions are approved by the employer.

v. Contributions authorized by employees for organized and generally recognized charities; provided the deductions for such contributions are approved by the employer.

vi. Payments authorized by employees or their collective bargaining agents for the rental of work clothing or uniforms or for the laundering or dry cleaning of work clothing or uniforms; provided to the employee at his or her discretion by an outside vendor or the employer and, provided the deductions for such payments are approved by the employer.

vii. Labor organization dues and initiation fees, and such other labor organization charges permitted by law.

viii. Payments authorized either in writing by employees, or under a collective bargaining agreement, for health club membership fees or for child care services, provided such deductions are approved by the employer.

ix. Such other contributions, deductions and payment as the Commissioner of Labor and Workforce Development may authorize by regulation as proper and in conformity with the intent and purpose of the Act, if such deductions are approved by the employer.

12:55-2.2 Payroll deductions for mass transportation commuter tickets

(a) Each employer may use a payroll deduction as a means of providing mass transportation commuter tickets only if the payroll deduction has been authorized by the employee in writing or in a collective bargaining agreement.

(b) Each employer that uses a payroll deduction as set forth in (a) above shall make this method of payment for mass transportation commuter tickets available to all of its employees.

(c) When an employer provides transportation to a work site, the employer may deduct the actual cost, exclusive of profit to the employer, of such transportation, provided such deduction is in accordance with (a) above.

12:55-2.3 Voluntary wage deduction for repayment of financial obligations to the State of New Jersey

(a) Each employer may institute a system whereunder a portion of an employee's salary is withheld as an installment payment against any financial obligation by that employee to the State of New Jersey.

(b) Any employer who institutes such a repayment plan pursuant to (a) above shall withhold on a periodic basis from an employee's salary only such an amount as that employee shall have expressly authorized in writing.

(c) Any employer who withholds any sum from an employee's salary for repayment of a financial obligation by the employee to the State shall forthwith pay the amount of such withheld salary to the appropriate State officer or agent to whom such obligation is made payable.

(d) Nothing in this section shall be construed as mandating participation by an employer or employee in such an installment repayment program.

12:55-2.4**Time and mode of payment**

(a) All final payment of wages following the termination or voluntary leaving of employment shall be completed within 10 days from the end of the work period for which such wages are earned, in compliance with N.J.S.A. 34:11-4.2.

(b) When any employee is suspended as a result of a labor dispute and such labor dispute involves those employees who make up payrolls, the employer may have an additional 10 days in which to pay such wages.

(c) The employer shall:

1. Pay the employee on the regular scheduled pay date; or
2. Mail such payment of wages to the last known address of the employee.

(d) Except under the circumstances set forth in (h) and (i) below, payment of wages shall be in lawful money of the United States or with checks drawn on financial institutions where suitable arrangements are made for the cashing of such checks by employees without difficulty and for the full amount for which they were drawn.

(e) When a fee is charged for the cashing of a payroll check at the banking institution on which the check is drawn, the employer shall bear the burden of the fee.

(f) Where suitable arrangements are not made for the cashing of payroll checks as set forth in (d) above, the employer shall bear the burden of any fee charged to the employee for the cashing of such payroll check.

(g) The employer shall be responsible for payment of check-deposit-return fees.

1. When an employee with direct deposit has his or her account debited with a check-deposit-return fee, the employer shall reimburse the employee as soon as possible, but no later than the next regularly scheduled payday.

2. Reimbursement by the employer under (g)1 above shall be for the full amount of the check-deposit-return fee and shall not be paid to the employee as wages.

(h) In lieu of paying wages directly to an employee in the manner prescribed in (d) above, an employer may arrange with a financial institution or financial institutions to pay the wages of an employee by direct deposit, provided that all of the following conditions are met:

1. The employee shall first consent in writing to the direct deposit of his or her wages;
2. Consent under (h)1 above shall be obtained by the employer without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the direct deposit arrangement;
3. Consent under (h)1 above shall not be a condition of hire or continued employment;
4. The employee's wages so deposited shall be subject to withdrawal and other disposition by the employee to the same extent and in the same manner as if such deposit had been made directly by the employee under (d) above;

5. The employee shall be furnished with a statement of deductions made from his or her wages for each pay period such deductions were made; and

6. The employee shall, on timely notice to the employer, be permitted by the employer to elect not to have his or her wages deposited in the manner prescribed in this subsection and to be paid his or her wages directly in the manner provided under (d) above or as provided under (i) below.

(i) In lieu of paying wages directly to an employee in the manner prescribed in (d) above, an employer may pay the wages of an employee by causing the amount of such employee's wages to be deposited in a payroll debit card account, provided that all of the following conditions are met:

1. The employee shall first consent in writing to the deposit of his or her wages in a payroll debit card account;

2. Consent under (i)1 above shall be obtained by the employer without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the payroll debit card account deposit arrangement;

3. Consent under (i)1 above shall not be a condition of hire or continued employment;

4. The employee's wages so deposited in a payroll debit card account shall be subject to withdrawal and other disposition by the employee to the same extent and in the same manner as if such deposit had been made directly by the employee under (d) above into an account maintained in a financial institution in the name of the employee.

i. On at least one occasion per pay period, the employee shall be permitted, using the payroll debit card, to withdraw his or her wages in full, in lawful money of the United States, without any fee to the employee and without difficulty;

5. The employee shall be furnished with a statement of deductions made from his or her wages for each pay period such deductions were made;

6. Prior to obtaining consent from the employee under (i)1 above, the employer shall disclose in writing to the employee each of the features of the payroll debit card (for example, withdrawal at any ATM or point-of-sale use), including any fee(s), which may be charged to the card holder for the use of each of those features. The written disclosure required under this paragraph shall also include an explanation of the specific means by which the employee may, on at least one occasion per pay period, use the payroll debit card to withdraw his or her wages in full, in lawful money of the United States, without any fee to the employee and without difficulty; and

7. The employee shall, on timely notice to the employer, be permitted by the employer to elect not to have his or her wages deposited in the manner prescribed in this subsection and to be paid his or her wages directly in the manner provided under (d) above or in the manner provided under (h) above.

(j) Except under the circumstances set forth in (k) below, an employer shall pay the full amount of wages due his employees at least twice during each calendar month, on regular paydays designated in advance by the employer.

(k) An employer may establish regular paydays less frequent than semimonthly for employees who are exempt from overtime under N.J.A.C. 12:56-7, provided that the employee shall be paid in full at least once each calendar month on a regularly established schedule.

12:55-2.5**Withholding of income tax for foreign jurisdictions**

(a) For purposes of this section, a foreign jurisdiction means a sister state or any municipality or other subdivision of a sister state which imposes a tax on the income or wages of nonresidents employed in New Jersey.

(b) Each New Jersey employer who employs nonresidents may, for each pay period, deduct and withhold an amount, computed in accordance with (d) below, from the salary or wages of an employee whose salary or wages are subject to the income or wage tax of a foreign jurisdiction, for the purpose of crediting such amount on account of the income or wage tax due or to become due from the employee to the foreign jurisdiction.

(c) An employer shall not deduct and withhold an employee's salary or wages under (b) above unless it has obtained the expressed written authorization of the employee.

(d) The amount of the employee's salary or wages deducted and withheld shall be computed in such a manner as to result in withholding from the employee's salary or wages, during each calendar year, an amount substantially equivalent to the tax reasonably estimated to be or become due from such employee to the foreign jurisdiction as taxes upon his or her salary or wages received from the employer during the calendar year.

(e) The employer shall hold the amounts deducted and withheld in a trust fund for payment to the foreign jurisdiction.

(f) The employer shall furnish to the foreign jurisdiction a statement of the name, place of residence, amount of salary or wages earned by, and amount of salary or wages so deducted or withheld from the employee.

(g) Nothing in this section shall eliminate, reduce or replace an employer's wage reporting and recordkeeping requirements under N.J.S.A. 34:11-1 et seq. and N.J.A.C. 12:56-4.1, or an employer's gross income tax withholding requirements under N.J.S.A. 54A:7-1 et seq. and N.J.A.C. 18:35-1.10 for an employee who authorizes the employer to withhold the income or wage tax of a foreign jurisdiction.

CHAPTER 61
WAGE COLLECTION

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:61-1.1 Purpose; scope
- 12:61-1.2 Definitions
- 12:61-1.3 Powers of the Commissioner
- 12:61-1.4 Administrative fees
- 12:61-1.5 Interest
- 12:61-1.6 Wage settlement agreements

SUBCHAPTER 1. GENERAL PROVISIONS

12:61-1.1 Purpose; scope

(a) The purpose of this subchapter is to establish rules to effectuate N.J.S.A. 34:11-57 et seq., the New Jersey State Wage Collection Law, to empower the Commissioner of Labor and Workforce Development means of collecting wages due.

(b) The chapter is applicable to:

1. Wages and hours subject to the New Jersey State Wage Collection Law;
2. Wages paid to an employee for services rendered; and
3. Time and mode of payment.

(c) This chapter shall not apply to:

1. Volunteers; or
2. Patients.

12:61-1.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Commissioner” means the Commissioner of Labor and Workforce Development or any person or persons in the Department designated in writing by him or her for the purposes of this article.

“Employee” means any natural person who works for another for hire.

“Employer” means any person, partnership, firm or corporation employing another for hire.

“Service” means proper legal service of a summons, subpoena, or any other legal document referred to in this subchapter. Service shall be in accordance with the New Jersey Civil Court Rules.

“Wages” means any monies due an employee from the employer, pursuant to laws administered by the Commissioner, whether payable by the hour, day, week, semi-monthly, monthly or yearly and shall include

commissions, bonuses, piecework compensation and any other benefits arising out of an employment contract.

12:61-1.3 Powers of the Commissioner

(a) The Commissioner of Labor and Workforce Development or his or her representative is authorized and empowered to investigate any claim for wages due an employee. In conducting such investigation, the Commissioner or his or her representative may do the following:

1. Summon the defendant;
2. Subpoena witnesses;
3. Administer oaths; and
4. Take testimony.

(b) The Commissioner of Labor and Workforce Development or his or her duly authorized representative shall upon such proceeding make a decision or award when the sum in controversy, exclusive of costs, does not exceed \$10,000.^[1]

(c) Such decision or award as mentioned in (b) above shall be a judgment when a certified copy thereof is filed with the Superior Court.

(d) The Commissioner of Labor and Workforce Development is authorized to supervise payments of amounts due to employees.

(e) The Commissioner or his or her representative shall make the final decision of the Department.

(f) Appeals of the final decision of the Department shall be made to the Superior Court of New Jersey, Law Division pursuant to N.J.S.A. 34:11-63 and Rule 4:74-8 of the New Jersey Rules of Court.

^[1]P.L. 2006, c.24 increasing jurisdictional amounts to \$30,000 was signed June 22, 2006 and became effective September 20, 2006.

12:61-1.4 Administrative fees

(a) The employer shall pay the Commissioner an administrative fee on all payment of gross amounts due employees pursuant to N.J.S.A. 34:11-58. Although the administrative fee is not collected by the Commissioner until the actual payment of wages due, the duty to pay the fee attaches immediately upon the filing of a claim for wages.

(b) A schedule of fees are as follows:

1. First violation—10 percent of the amount due an employee;
2. Second violation—18 percent of the amount due an employee;
3. Third and subsequent violations—25 percent of the amount due an employee.

(c) All payments shall be made payable to the Commissioner of Labor and Workforce Development, Wage Collection Trust Fund by certified check or money order in a form suitable to the Commissioner of Labor and Workforce Development.

(d) All fees shall become part of the judgment as mentioned in 12:61-1.3(d).

12:61-1.5 Interest

(a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:

1. When an employer has unreasonably delayed compliance with an order of the Commissioner to pay wages owed to an employee;
2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the employer over an extensive period of time; or
3. Where the Commissioner finds sufficient cause based on the particular case.

(b) Where applicable, interest deemed owed to an employee shall be calculated at the annual rate as set forth in New Jersey Court Rules, 4:42-11.

12:61-1.6 Wage settlement agreements

(a) The terms of any settlement agreement entered into between an employer and employee(s) subsequent to the initiation of the wage collection process shall be conveyed to the Commissioner or his or her designee for review.

(b) The Commissioner or his or her designee shall thereupon determine if the settlement agreement comports with the applicable wage statutes and rules of the State of New Jersey.

(c) Any settlement agreement entered into in violation of the wage laws of the State shall be deemed by the Commissioner or his or her designee to be null, void and unenforceable.

CHAPTER 2

NOTIFICATION

SUBCHAPTER 1. NOTIFICATION POSTED BY EMPLOYER PURSUANT TO P.L. 2009, C. 194, RELATING TO EMPLOYER OBLIGATION TO MAINTAIN AND REPORT RECORDS REGARDING WAGES, BENEFITS, TAXES AND OTHER CONTRIBUTIONS AND ASSESSMENTS UNDER STATE WAGE, BENEFIT AND TAX LAWS

- 12:2-1.1 Purpose and scope
- 12:2-1.2 Definitions
- 12:2-1.3 Posting and distribution requirements

SUBCHAPTER 2. NOTIFICATION POSTED BY EMPLOYER PURSUANT TO P.L. 2012, c. 57, RELATING TO THE RIGHT TO BE FREE OF GENDER INEQUITY OR BIAS IN PAY, COMPENSATION, BENEFITS, OR TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT

- 12:2-2.1 Purpose and scope
- 12:2-2.2 Definitions
- 12:2-2.3 Posting and distribution requirements
- 12:2-2.4 Acknowledgment of receipt

APPENDIX A Chapter 194, Laws of New Jersey, 2009
Relating to Employer Obligation to Maintain and Report Records Regarding Wages, Benefits, Taxes and Other Contributions and Assessments Pursuant to State Wage, Benefit and Tax Laws

APPENDIX B Right to be Free of Gender Inequity or Bias in Pay, Compensation, Benefits, or Other Terms and Conditions of Employment

SUBCHAPTER 1. NOTIFICATION POSTED BY EMPLOYER PURSUANT TO P.L. 2009, C. 194, RELATING TO EMPLOYER OBLIGATION TO MAINTAIN AND REPORT RECORDS REGARDING WAGES, BENEFITS, TAXES AND OTHER CONTRIBUTIONS AND ASSESSMENTS UNDER STATE WAGE, BENEFIT AND TAX LAWS

12:2-1.1 Purpose and scope

(a) The purpose of this subchapter is to issue by rule, as required by P.L. 2009, c. 194, the form of notification that shall be used by employers to comply with the requirement, set forth within P.L. 2009, c. 194, that each employer that is required to maintain and report records regarding wages, benefits, taxes and other contributions and assessments pursuant to the State wage, benefit and tax laws shall conspicuously post notification, in a place or places accessible to all employees in each of the employer's workplaces, of the obligation of the employer to maintain and report those records and the requirement, set forth within P.L. 2009, c. 194, that each employer shall provide each employee a written copy of the notification not later than 30 days after the form of the notification is issued by the Department, or, if the employee is hired after the issuance, at the time of the employee's hiring.

(b) The provisions of this subchapter shall be applicable to each employer that is required to maintain and report records regarding wages, benefits, taxes and other contributions and assessments pursuant to State wage, benefit and tax laws.

12:2-1.2 Definitions

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

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

"State wage, benefit and tax laws" means "State wage, benefit and tax laws" as that term is defined within section 1 of P.L. 2009, c. 194.

12:2-1.3 Posting and distribution requirements

(a) Each employer that is required to maintain and report records regarding wages, benefits, taxes, and other contributions and assessments pursuant to the State wage, benefit, and tax laws shall conspicuously post in a place or places accessible to all employees in each of the employer's workplaces the notification found in *N.J.A.C. 12:2 Appendix A*.

(b) Each employer that is required to maintain and report records regarding wages, benefits, taxes, and other contributions and assessments pursuant to the State wage, benefit, and tax laws shall not later than December 7, 2011, or, if the employee is hired after November 7, 2011, at the time of the employee's hiring, provide each employee a written copy of the notification found in *N.J.A.C. 12:2 Appendix A*.

(c) In the event that an employer has an internet site or intranet site for exclusive use by its employees and to which all employees have access, posting of the notification found in *N.J.A.C. 12:2 Appendix A* on the employer's internet site or intranet site shall satisfy the conspicuous posting requirement set forth in (a) above.

(d) Providing to an employee via email the notification found in *N.J.A.C. 12:2 Appendix A* shall satisfy the requirement in (b) above, that the employer provide each employee a written copy of the notification.

SUBCHAPTER 2. NOTIFICATION POSTED BY EMPLOYER PURSUANT TO P.L. 2012, c. 57, RELATING TO THE RIGHT TO BE FREE OF GENDER INEQUITY OR BIAS IN PAY, COMPENSATION, BENEFITS, OR TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT

12:2-2.1 Purpose and scope

(a) The purpose of this subchapter is to issue by rule, as required by P.L. 2012, c. 57, the form of notification, which shall be used by employers to comply with the requirement, set forth within P.L. 2012, c. 57, that every employer in New Jersey, with 50 or more employees, shall conspicuously post notification, in a place or places accessible to all employees in each of the employer's workplaces, detailing the right to be free of gender inequity or bias in pay, compensation, benefits, or other terms and conditions of employment under the "Law Against Discrimination," P.L. 1945, c. 169 (*N.J.S.A. 10:5-1 et seq.*), P.L. 1952, c. 9 (*N.J.S.A. 34:11-56.1 et seq.*), Title VII of the Civil Rights Act of 1964, Pub. L. 88-352 (*42 U.S.C. §§ 2000e et seq.*), and the Equal Pay Act of 1963, Pub. L. 88-38 (*29 U.S.C. § 206(d)*), which prohibit wage or compensation discrimination based on gender. In addition, the purpose of this subchapter is to require that every such employer shall provide each employee of the employer with a written copy of the notification: not later than February 5, 2014, or if the employee is hired after January 6, 2014, at the time of the

employee's hiring; annually, on or before December 31 of each year; and at any time, upon the first request of the employee.

(b) The provisions of this subchapter shall be applicable to every covered employer.

12:2-2.2 Definitions

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

"Covered employer" means an employer in New Jersey, which has a total of 50 or more employees, whether those employees work inside or outside of New Jersey.

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

12:2-2.3 Posting and distribution requirements

(a) Each covered employer shall conspicuously post in a place or places accessible to all employees in each of the employer's workplaces the notification found in *N.J.A.C. 12:2 Appendix B*.

(b) Each covered employer shall provide each employee a written copy of the notification found in *N.J.A.C. 12:2 Appendix B*:

1. Not later than February 5, 2014, or at the time of the employee's hiring, if the employee is hired after January 6, 2014;
2. Annually, on or before December 31 of each year; and
3. Upon the first request of an employee.

(c) In the event that an employer has an internet site or intranet site for exclusive use by its employees and to which all employees have access, posting of the notification found in *N.J.A.C. 12:2 Appendix B* on the employer's internet site or intranet site shall satisfy the conspicuous posting requirement set forth in (a) above.

(d) An employer shall make the written copy of the notification available to each worker under (b) above using one of the following methods:

1. By e-mail delivery;
2. Via printed material, including, but not limited to, a pay check insert; brochure or similar informational packet provided to new hires; an attachment to an employee manual or policy book; or flyer distributed at an employee meeting; or
3. Through an internet or intranet website, if the site is for the exclusive use of all employees, can be accessed by all employees, and the employer provides notice to the employees of its posting.

12:2-2.4 Acknowledgment of receipt

(a) The notification provided by the employer under *N.J.A.C. 12:2-2.3(b)* shall be accompanied by an acknowledgement that the employee has received the notification and has read and understands its terms.

(b) The acknowledgment in (a) above shall be signed by the employee, in writing or by means of electronic verification, and returned to the employer within 30 days of its receipt.

APPENDIX A

Chapter 194, Laws of New Jersey, 2009

Relating to Employer Obligation to Maintain and Report Records Regarding Wages, Benefits, Taxes and Other Contributions and Assessments Pursuant to State Wage, Benefit and Tax Laws

Wage Payment Law (N.J.S.A. 34:11-4.1 et seq.) and Wage and Hour Law (N.J.S.A. 34:11-56a et seq.)

Each employer must keep a record of each employee which contains the following information:

1. The name of the employee;
2. The address of the employee;
3. The birth date of the employee if the employee is under the age of 18;
4. The total hours worked by the employee each day and each workweek;
5. The earnings of each employee, including the regular hourly wage, gross to net amounts with itemized deductions, and the basis on which wages are paid;
6. Regarding each employee who receives gratuities, the total gratuities received by the employee during the payroll week;
7. Regarding each employee who receives gratuities, daily or weekly reports completed by the employee containing the following information: (a) the employee's name, (b) the employee's address, (c) the employee's social security number, (d) the name and address of the employer, (e) the calendar day or week covered by the report, and (f) the total amount of gratuities received; and
8. Regarding each employee for whom the employer claims credit for food or lodging as a cash substitute for the employee who receives food or lodging supplied by the employer, information substantiating the cost of furnishing such food or lodgings, including but not limited to the nature and amount of any expenditures entering into the computation of the fair value of the food or lodging and the date required to compute the amount of the depreciated investment in any assets allocable to the furnishing of the lodgings, including the date of acquisition or construction, the original cost, the rate of depreciation and the total amount of accumulated depreciation on such assets.

The employer may use any system of time keeping provided that it is a complete, true and accurate record.

The employer must keep the wage and hour records described above for a period of six years.

The employer must keep the wage and hour records described above at the place of employment or in a central office in New Jersey.

Prevailing Wage Act (N.J.S.A. 34:11-56.25 et seq.)

The Prevailing Wage Act applies to employers **only under certain circumstances**.

Specifically, it applies only when an employer enters into a contract in excess of the prevailing wage contract threshold amount for any public work (as the term "public work" is defined at *N.J.S.A. 34:11-56.26*) to which any public body is a party or for public work to be done on a property or premises owned by a public body or leased or to be leased by a public body.

Each public works contractor must submit to the public body or lessor which contracted for the public works project a certified payroll record containing the following employee information:

1. Name;
2. Address;
3. Social security number;

4. Craft or trade;
5. Actual hourly rate of pay;
6. Actual daily, overtime and weekly hours worked in each craft or trade;
7. Gross pay;
8. Itemized deductions;
9. Net pay paid to the employee;
10. Any fringe benefits paid to approved plans, funds or programs on behalf of the employee; and
11. Fringe benefits paid in cash to the employee.

Each public works contractor must, within 10 days of payment of wages, submit the certified payroll record to the public body or the lessor which contracted for the public works project.

Each public works contractor which employs one or more apprentices on a public works project must maintain with its records written evidence that the apprentice or apprentices are registered in an approved apprenticeship program while performing work on the project.

The Unemployment Compensation Law (*N.J.S.A. 43:21-1 et seq.*), Temporary Disability Benefits Law (*N.J.S.A. 43:21-25 et seq.*) and the Family Leave Insurance Benefits Law, P.L. 2008, c. 17.

Payroll records: Each employing unit must maintain a record for each worker engaged in employment, which record must contain the following information about the worker:

1. Full name, address and social security number;
2. Total remuneration paid in each pay period showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States, or the amount of remuneration actually received by the employee, whichever is higher, and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
3. An entry under the heading "special payments" of the amount of any special payments, such as bonuses and gifts, which have been paid during the pay period but which relate to employment in a prior period. The following shall be shown separately under this heading: cash payments, cash value of other remuneration, the nature of such payments, the period during which the services were performed for which special payments were payable;
4. The date hired, rehired and returned to work after temporary layoff;
5. The date separated from employment and the reason for separation;
6. Such information as may be necessary to determine remuneration on a calendar week basis; and
7. The number of base weeks (as the term "base week" is defined in *N.J.S.A. 43:21-19(t)*) and wages.

All records referred to in 1. through 7. above must be kept safe and readily accessible at the New Jersey place of business of the employing unit.

All records referred to in 1. through 7. above must be retained for the current calendar year and for the four preceding calendar years.

Once an employer becomes inactive, the employer must keep all records referred to in 1. through 7. above for the subsequent six quarters.

Wage reporting: Each employer (other than employers of domestic service workers) must electronically file a WR-30, "Employer Report of Wages Paid," with the Division of Revenue, within the Department of the Treasury, within 30 days after the end of each quarter. The WR-30 lists the name, social

security number and wages paid to each employee and the number of base weeks worked by the employee during the calendar quarter.

Each employer of domestic service workers (as the term "domestic service worker" is defined at *N.J.A.C. 12:16-13.7(b)*) must file an annual, rather than quarterly, WR-30 with the Division of Revenue, within the Department of the Treasury.

Contribution reporting: Each employer (other than employers of domestic service workers) must electronically file an NJ-927, "Employer's Quarterly Report," with the Division of Revenue, within the Department of the Treasury, and remit the corresponding unemployment insurance, supplemental workforce fund, workforce development partnership fund, temporary disability insurance and family leave insurance contribution payments, within 30 days after the end of each quarter. The NJ-927 lists the total of all wages paid, the wages paid in excess of the taxable maximum, the taxable wages on which contributions are due, the number of workers employed during the pay period, the number of workers insured under a "private plan" for temporary disability insurance and the number of workers insured under a "private plan" for family leave insurance.

Each employer of domestic service workers (as the term "domestic service worker" is defined in *N.J.A.C. 12:16-13.11(c)*) must file an annual, rather than quarterly, NJ-927H, "Domestic Employer's Annual Report," with the Division of Revenue, within the Department of the Treasury.

Temporary Disability Insurance and Family Leave Insurance information: Each employer must retain all records pertaining to any election to discontinue a private plan for temporary disability insurance and/or family leave insurance benefits and must make such records available for inspection by the Division of Temporary Disability Insurance for a one-year period from the date that the private plan is terminated.

Each employer having a private plan for temporary disability insurance and/or family leave insurance must, within 10 days after the Division of Temporary Disability Insurance has mailed the employer a request for information with respect to a period of disability, furnish the Division with any information requested or known to the employer which may bear upon the eligibility of the claimant.

Each employer having two or more approved private plans in effect during a calendar half-year or any portion thereof must, on or before the 30th day following the close of the calendar half-year, file a report showing the amount of taxable wages paid during such calendar half-year to employees while covered under each such private plan.

Each employer who provides temporary disability insurance to its employees through a self-insured private plan must, for the six-month periods ending June 30 and December 31 of each calendar year during which the self-insured private plan is in effect, file a statement with the Division of Temporary Disability Insurance, on or before the 30th day following the end of the respective six-month period showing:

1. The number of claims received during the six-month period,
2. The number of claims accepted during the six-month period,
3. The amount of benefits paid during the six-month period, and
4. Such other information as the Division of Temporary Disability Insurance may require with respect to the financial ability of the self-insurer to meet the self-insured's obligations under the plan.

On or before the 30th day following the close of each calendar year during which a self-insured private plan for temporary disability insurance is in effect, the employer must file a report with the Division of Temporary Disability Insurance showing:

1. The amount of funds available at the beginning of that year for payment of disability benefits,
2. The amount contributed by workers during that year,
3. The amount contributed by the employer during that year,
4. The amount of disability benefits paid during that year,
5. Direct cost of administration of the plan during that year, and

6. The number of employees covered by the plan as of December 31.

Each employer who provides family leave insurance to its employees through a self-insured private plan must for the one-year period ending December 31 of each calendar year during which a self-insured private plan is in effect file a statement with the Division of Temporary Disability Insurance, on or before the 30th day following the end of the one-year period showing the following information with regard to each of the following types of claims: care of a sick child, care of a sick spouse, care of a sick domestic partner, care of a sick civil union partner, care of a sick parent, bonding by biological parent with a newborn child, bonding by domestic partner or civil union partner of biological parent with a newborn child, bonding by individual with newly adopted child:

1. The number of claims for family leave insurance benefits received during the one-year period,
2. The number of claims for family leave insurance benefits accepted during the one-year period,
3. The number of workers who received family leave insurance benefits during the one-year period,
4. The amount of family leave insurance benefits paid during the one-year period,
5. The average weekly family leave insurance benefit during the one-year period,
6. The amount of sick leave, vacation leave or other fully paid time, which resulted in reduced benefit duration during the one-year period,
7. With regard solely to family leave insurance benefit claims to care for sick family members, the amount of intermittent family leave insurance benefits paid during the one-year period, and
8. The average duration of family leave insurance benefits, in days, during the one-year period.

The information reported in 1. through 8. above must be broken down by sex and by age group, beginning at 25 years and under and increasing in increments of 10.

On or before the 30th day following the close of each calendar year during which a self-insured private plan for family leave insurance is in effect, the employer must file a report with the Division of Temporary Disability Insurance showing:

1. The amount of funds available at the beginning of that year for payment of family leave insurance benefits,
2. The amount contributed by workers during that year,
3. The direct cost of administration of the plan during that year,
4. The number of employees covered by the plan as of December 31, and
5. Such other information as the Division of Temporary Disability Insurance may require with respect to the financial ability of the self-insurer to meet the self-insured's obligation under the plan.

Workers' Compensation Law (N.J.S.A. 34:15-1 et seq.)

Upon the happening of an accident or the occurrence of any occupational disease, an employer who has insurance coverage or utilizes a third-party administrator shall promptly furnish the insurance carrier or the third-party administrator with accident or occupational disease information.

Within three weeks after an accident or upon knowledge of the occurrence of an occupational disease, every insurance carrier, third-party administrator, statutory non-insured employer, including the State, counties, municipalities and school districts, and duly authorized self-insured employer not utilizing a third-party administrator must file a report designated as "first notice of accident" in electronic data interchange media with the Division of Workers' Compensation through the Compensation Rating and Inspection Bureau in a format prescribed by the Compensation Rating and Inspection Bureau. When filed by an insurance carrier or third-party administrator, the report must also be sent to the employer. If the employer disagrees with the report, the employer may prepare and sign an amended report and file the amended report with the insurance carrier or third-party administrator. The amended report must then be filed electronically with the Division through the Compensation Rating and Inspection Bureau.

Every insurance carrier providing workers' compensation insurance and every workers' compensation self-insured employer shall designate a contact person who is responsible for responding to issues concerning medical and temporary disability benefits where no claim petition has been filed or where a claim petition has not been answered. The full name, telephone number, mailing address, email address and fax number of the contact person must be submitted to the Division of Workers' Compensation utilizing the Division's contact person form in the manner instructed on the form.

Each employer, when directed to do so by the Division of Workers' Compensation, must submit to the Division of Workers' Compensation copies of such medical certificates and reports as it may have on file.

Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.)

Employer's Quarterly Report: The Employer's Quarterly Report, NJ-927, reports New Jersey Gross Income Tax withheld, unemployment insurance, supplemental workforce fund, workforce development partnership fund, family leave insurance and temporary disability insurance wage and withholding information.

Each employer is required to electronically file an Employer's Quarterly Report, NJ-927, for each calendar quarter, regardless of the amount of tax actually due for a particular quarter. Quarterly reports are due on the 30th day of the month following the end of each quarter.

Employers of "domestic service workers" may report and pay New Jersey Gross Income Tax withheld on an annual, rather than quarterly, basis on an NJ-927H.

Records to be kept: Every employer is required to keep all pertinent records available for inspection by authorized representatives of the New Jersey Division of Taxation. Such records must include the following:

1. The amounts and dates of all wage payments subject to New Jersey Gross Income Tax;
2. The names, addresses and occupations of employees receiving such payments;
3. The periods of their employment;
4. Their social security numbers;
5. Their withholding exemption certificates;
6. The employer's New Jersey Taxpayer Identification Number;
7. Record of weekly, monthly, quarterly remittances and/or returns and annual returns filed;
8. The dates and amounts of payments made; and
9. Days worked inside and outside of New Jersey for all nonresident employees.

Contact Information

If an employee or an employee's authorized representative wishes to contact a State representative in order to provide information to or file a complaint with the representative regarding an employer's possible failure to meet any of the requirements set forth above, he or she may use the following contact information:

For possible failure to meet the record keeping or reporting requirements of the Wage Payment Law, Wage and Hour Law or Prevailing Wage Act:

Phone: 609-292-2305

E-mail: wagehour@dol.state.nj.us

Mail: New Jersey Department of Labor and Workforce Development

Division of Wage and Hour Compliance

P.O. Box 389

Trenton, NJ 08625-0389

For possible failure to meet the record keeping or reporting requirements of the Unemployment Compensation Law, Temporary Disability Benefits Law or Family Leave Insurance Benefits Law:

Phone: 609-292-2515
E-mail: emplaccts@dol.state.nj.us
Mail: New Jersey Department of Labor and Workforce Development
Division of Employer Accounts
P.O. Box 947
Trenton, NJ 08625-0947

For possible failure to meet the record keeping or reporting requirements of the Workers' Compensation Law:

Phone: 609-292-2515
E-mail: dwc@dol.state.nj.us
Mail: New Jersey Department of Labor and Workforce Development
Division of Workers' Compensation
P.O. Box 381
Trenton, NJ 08625-0381

For possible failure to meet the record keeping or reporting requirements of the Gross Income Tax Act:

Phone: 609-292-6400
E-mail: nj.taxation@treas.state.nj.us
Mail: New Jersey Department of the Treasury
Division of Taxation
Information and Publications Branch
P.O. Box 281
Trenton, NJ 08625-0281

APPENDIX B

Right to be Free of Gender Inequity or Bias in Pay, Compensation, Benefits, or Other Terms and Conditions of Employment

New Jersey and federal laws prohibit employers from discriminating against an individual with respect to his/her pay, compensation, benefits, or terms, conditions or privileges of employment because of the individual's sex.

FEDERAL LAW ©Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on, among other things, an individual's sex. Title VII claims must be filed with the United States Equal Employment Opportunity Commission (EEOC) before they can be brought in court. Remedies under Title VII may include an order restraining unlawful discrimination, back pay, and compensatory and punitive damages. The Equal Pay Act of 1963 (EPA) prohibits discrimination in compensation based on sex. EPA claims can be filed either with the EEOC or directly with the court. Remedies under the EPA may include the amount of the salary or wages due from the employer, plus an additional equal amount as liquidated damages.

Please be mindful that in order for a disparity in compensation based on sex to be actionable under the EPA, it must be for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

There are strict time limits for filing charges of employment discrimination. For further information, contact the EEOC at 800-669-4000 or at www.eeoc.gov.

NEW JERSEY LAW

The New Jersey Law Against Discrimination (LAD) prohibits employment discrimination based on, among other things, an individual's sex. LAD claims can be filed with the New Jersey Division on Civil Rights (NJDCR) or directly in court. Remedies under the LAD may include an order restraining unlawful discrimination, back pay, and compensatory and punitive damages.

Another State law, *N.J.S.A. 34:11-56.1* et seq., prohibits discrimination in the rate or method of payment of wages to an employee because of his or her sex. Claims under this wage discrimination law may be filed with the New Jersey Department of Labor and Workforce Development (NJDLWD) or directly in court. Remedies under this law may include the full amount of the salary or wages owed, plus an additional equal amount as liquidated damages.

Please be mindful that under the State wage discrimination law a differential in pay between employees based on a reasonable factor or factors other than sex shall not constitute discrimination.

There are strict time limits for filing charges of employment discrimination. For more information regarding LAD claims, contact the NJDCR at 609-292-4605 or at www.njcivilrights.gov. For information concerning *N.J.S.A. 34:11-56.1* et seq., contact the Division of Wage and Hour Compliance (DWHC), within the NJDLWD at 609-292-2305 or at <http://lwd.state.nj.us>.

CHAPTER 64

PREVAILING WAGES FOR BUILDING SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

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- 12:64-1.3 Definitions

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- 12:64-4.1 Violations of the Act
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- 12:64-4.5 Hearings
- 12:64-4.6 Discharge or discrimination against worker making complaint

SUBCHAPTER 1. GENERAL PROVISIONS

12:64-1.1 Purpose

The purpose of this chapter is to establish prevailing wage levels for workers employed or engaged by contractors furnishing building services for any property or premises owned or leased by the State in order to safeguard the efficiency and general well-being of those workers and to protect them and the contractors for whom they work from the effects of serious and unfair competition, which is based on low wage levels that are detrimental to efficiency and well-being.

12:64-1.2 Scope

(a) This chapter shall apply to contractors who have contracted with the State to furnish building services for any property or premises owned or leased by the State.

(b) This chapter shall apply to building services workers who are employed or engaged by contractors who have contracted with the State to furnish building services for any property or premises owned or leased by the State.

(c) This chapter shall apply to contracts to furnish building services for any property or premises owned or leased by the State that are entered into or renewed by the State on or after March 13, 2006.

(d) This chapter shall not apply to contracts to furnish building services for any property or premises owned or leased by the State that were entered into prior to March 13, 2006 and extended on or after March 13, 2006.

12:64-1.3 Definitions

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

"Act" means the State Building Service Contracts Act, P.L. 2005, c. 379, *N.J.S.A. 34:11-56.58* et seq., and the rules promulgated in accordance therewith, this chapter.

"Building" includes everything within the outer walls of the building structure, as well as the exterior of those walls, and any front, rear or side portico attached to the building itself.

"Building services" means any cleaning or building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, engineering, securing, patrolling, or other work in connection with the care, securing or maintenance of an existing building. "Building services" shall not include any maintenance work or other public work for which a contractor is required under the New Jersey Prevailing Wage Act, *N.J.S.A. 34:11-56.25* et seq., to pay the "prevailing wage," as that term is defined in *N.J.S.A. 34:11-56.26*.

"Building services worker" or "worker" means any individual employed or engaged by a contractor to perform building services, pursuant to a State contract, for any property or premises owned or leased by the State.

1. "Building services worker" or "worker" shall include full-time workers, part-time workers, temporary workers and independent contractors.

2. "Building services worker" or "worker" shall not include any employee, including a learner, apprentice, or student, whose earning capacity is impaired by age or physical or developmental disability or injury, to whom the Commissioner has issued a special license authorizing employment at wages less than the prevailing wage for building services for a period of time as shall be fixed by the Commissioner or the Director of Wage and Hour Compliance and stated in the license.

"Certified payroll record" means a payroll record that is attested to by the contractor or the owner of the company doing business as the contractor, or a corporate officer of such company, or an authorized agent of the contractor.

"Commissioner" means the Commissioner of Labor and Workforce Development or his or her duly authorized designee.

"Contract" means those agreements entered into by the State for the principal purpose of furnishing building services. Where building space is leased by the State and the building owner furnishes general janitorial or other building services, the Act does not apply.

"Contracting State agency" means the particular State department, bureau, board, commission, agency or instrumentality, including a State institution of higher education, which enters into a contract with a contractor for the furnishing of building services for any property or premises owned or leased by the State.

"Contractor" means a person, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof, that enters into a contract for the furnishing of building services for any property or premises owned or leased by the State and includes any subcontractor or lower-tier subcontractor of a contractor, as defined in this section.

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

"Engineering" means the functions ordinarily performed by a "janitor" as that term is defined within the United States Department of Labor's Service Contract Act Directory of Occupations, namely, one who cleans and keeps in an orderly condition factory working areas and washrooms, or premises of an office, apartment house, or commercial or other establishment. Duties involve a combination of the following: sweeping, mopping or scrubbing, and polishing floors; removing chips, trash, and other refuse; dusting equipment, furniture, or fixtures; polishing metal fixtures or trimmings; providing supplies and minor maintenance services; and cleaning lavatories, showers, and restrooms. Excluded from the definition of the term "engineering" are workers who specialize in window washing, housekeeping staff who make beds and change linens as a primary responsibility, workers required to disassemble and assemble equipment in order to clean machinery, and workers who receive additional compensation to maintain sterile facilities or equipment. Also excluded from the definition of the term "engineering" are workers who maintain building infrastructure equipment and machinery, such as, but not limited to, heating, ventilation and air conditioning (HVAC), elevators, boilers, plumbing and electrical systems.

"Extended" means prolonging the duration of an existing contract as provided for and in accordance with the terms of that contract.

"Fringe benefit" means "fringe benefit" as that term is defined and used within the Federal Service Contract Act of 1965, *41 U.S.C. §§ 351 et seq.*, incorporated herein by reference, as amended and supplemented, and the regulations promulgated by the Secretary of Labor in accordance therewith, 29 CFR Part 4, incorporated herein by reference, as amended and supplemented.

"Leased by the State" means that not less than 55 percent of the property or premises is leased by the State, provided that the portion of the property or premises that is leased by the State measures more than 20,000 square feet.

"Monetary wage" means "monetary wage" as that term is defined and used within the Federal Service Contract Act of 1965, *41 U.S.C. §§ 351 et seq.*, incorporated herein by reference, as amended and supplemented, and the regulations promulgated by the Secretary of Labor in accordance therewith, 29 CFR Part 4, incorporated herein by reference, as amended and supplemented.

"Renewed" means a new contract entered into by the parties upon expiration or termination of an existing contract.

"Payroll record" means a form satisfactory to the Commissioner, wherein is shown worker information, such as name, address, social security number, and job classification, together with actual hourly rate of pay, actual daily, overtime and weekly hours worked in each job classification, gross pay, itemized deductions, and net pay paid to the worker; such record shall also include:

1. Any fringe benefits paid to approved plans, funds or programs on behalf of the worker; and
2. Fringe benefits paid in cash to the worker.

"Prevailing wage for building services" means the monetary wage and fringe benefit rates designated by the Commissioner based on the determinations made by the United States General Services

Administration pursuant to the Federal Service Contract Act of 1965, *41 U.S.C. §§ 351 et seq.*, for the appropriate localities and classifications of building services workers.

"State" means the State of New Jersey and all of its departments, bureaus, boards, commissions, agencies and instrumentalities, including any State institutions of higher education, but does not include political subdivisions of the State.

"State institutions of higher education" means Rutgers, the State University of New Jersey, the University of Medicine and Dentistry of New Jersey and the New Jersey Institute of Technology, and any of the State colleges or universities established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes, but does not include any county college established pursuant to Chapter 64A of Title 18A of the New Jersey Statutes.

"Subcontractor" means any subcontractor or lower-tier subcontractor of a contractor.

SUBCHAPTER 2. CONTRACTOR AND CONTRACTING STATE AGENCY RESPONSIBILITIES

12:64-2.1 Contract provisions

(a) The contractor and the contracting State agency shall ensure that each contract entered into between a contractor and a contracting State agency to furnish building services for any property or premises owned or leased by the State shall contain the following provisions:

1. A provision setting forth the prevailing wages for building services that are applicable to the workers employed or engaged in the performance of the contract;
2. A provision stating that the workers employed or engaged in the performance of the contract shall be paid not less than the applicable prevailing wages for building services, as set forth in the contract;
3. A provision requiring annual adjustments to the prevailing wages for building services set forth in the contract; and
4. A provision stating that if any worker employed or engaged by the contractor to furnish building services under the contract has been paid less than the prevailing wages for building services set forth in the contract, the State Treasurer may terminate the contractor's right to proceed with the work and the contractor and its sureties shall be liable to the State for any excess costs occasioned by the termination.

(b) For the purpose of requiring annual adjustments to the prevailing wages for building services in a contract under (a)3 above, the contract shall require that those adjustments be made on the anniversary date of the effective date of the contract.

12:64-2.2 Multiple classes of work

(a) Where, during a given workweek, a worker performs work in multiple job classifications and two or more "prevailing wages for building services" are applicable to the separate classes of work performed, the contractor must pay the worker the highest of such "prevailing wages for building services" for all hours worked in the workweek, unless the contractor's records clearly delineate which hours of work for the given worker in the given workweek were spent engaged in each separate class of work.

(b) Where a worker is employed or engaged for a portion of a given workweek in work not subject to the Act, which work would otherwise be compensated at a rate lower than the "prevailing wage for building services" to which a worker is entitled for covered work performed during the workweek, the contractor

must pay the worker the higher "prevailing wage for building services" for all work performed during the workweek, including work not subject to the Act, unless the contractor's records clearly delineate which hours of work for the given worker in the given workweek were spent engaged in covered work and which hours were spent engaged in work not subject to the Act.

12:64-2.3 Collective bargaining rights

Where a collective bargaining agreement has established a higher rate of compensation than the applicable "prevailing wage for building services," the affected worker or workers shall receive the higher rate of compensation set forth in the collective bargaining agreement.

12:64-2.4 Records

(a) Each contractor shall keep an accurate payroll record for each worker performing building services pursuant to a State contract.

(b) Each contractor shall preserve the records maintained under (a) above for a period of two years from the date of payment of the monetary wages or fringe benefits.

(c) The records maintained under (a) above shall be open at all reasonable hours to inspection by the Commissioner and the Director of the Division of Purchase and Property within the Department of the Treasury.

SUBCHAPTER 3. INSPECTIONS

12:64-3.1 Right to enter and inspect

(a) The Commissioner shall have the authority to:

1. Inspect and copy books, registers, payrolls or other records that relate to or affect monetary wages, fringe benefits, hours and other conditions of work for building services workers;

2. Question, privately, any employee or managerial executive of the contractor, including building services workers, to determine whether they are aware of violations of the Act; and

3. Require contractors to submit written statements, including sworn statements, concerning monetary wages, fringe benefits, hours, names, addresses, and other information pertaining to the contractor's workers and their work as the Commissioner may deem necessary or appropriate.

(b) If, within 10 days of a request by the Commissioner, a contractor fails to file the material listed in (a)1 or 3 above, sworn as to its validity and accuracy, the Commissioner may direct the State Treasurer to withhold from the contractor up to 25 percent of the amount, not to exceed \$ 100,000, to be paid to the contractor under the terms of the contract pursuant to which the building services work is being performed.

1. When the contractor complies with the request for records, the Commissioner shall notify the State Treasurer, who shall immediately release the withheld funds.

(c) The contractor shall submit to the contracting State agency, in a form satisfactory to the Commissioner, a certified payroll record on each building services contract.

1. Such record shall be submitted each payroll period within 10 days of the payment of monetary wages or fringe benefits.

2. The contracting State agency shall receive, file, store and make available for inspection by the Commissioner during normal business hours the certified payroll records.

SUBCHAPTER 4. VIOLATIONS, PENALTIES AND FEES

12:64-4.1 Violations of the Act

(a) Violations of the Act shall occur when a contractor:

1. Willfully hinders or delays the Commissioner in the performance of the duties of the Commissioner in the enforcement of the Act;

2. Fails to make, keep and preserve any records as required under the provisions of the Act;

3. Falsifies any such record;

4. Refuses to make any such record accessible to the Commissioner upon demand;

5. Refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of the Act to the Commissioner on demand;

6. Pays or agrees to pay monetary wages or fringe benefits at a rate less than the prevailing wage for building services applicable under the Act;

7. Requests, demands, or receives, either for himself or herself or any other person, either before or after a worker is employed or engaged in the performance of building services at a specified rate of wages, the following:

i. That such worker forego, pay back, return, donate, contribute or give any part, or all, of his or her monetary wages, fringe benefits, or thing of value, to any person upon the statement, representation or understanding that failure to comply with such request or demand will prevent such worker from procuring or retaining engagement or employment; or

8. Otherwise violates any provision of the Act or of any order issued under the Act.

(b) A contractor who violates any provision of the Act shall be guilty of a disorderly persons offense and shall, upon conviction therefor:

1. Be fined not less than \$ 100.00, nor more than \$ 1,000;

2. Be imprisoned for not less than 10, nor more than 90 days; or

3. Be subject to both the fine and imprisonment.

(c) Each week, in any day of which a worker is paid less than the rate applicable to that worker under the Act and each worker so paid, shall constitute a separate offense.

12:64-4.2 Administrative penalties

(a) As an alternative to or in addition to any other sanctions provided for in N.J.A.C. 12:64-4.1, when the Commissioner finds that a contractor has violated the Act, the Commissioner may assess and collect administrative penalties in the amounts that follow:

1. First violation -- not more than \$ 250.00.
2. Second and subsequent violations -- not more than \$ 500.00.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail 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 working days following the receipt of the notice.

1. If a hearing is not requested, the notice shall become a final order upon the expiration of the 15-working day period following receipt of the notice.

2. If a hearing is requested, the Commissioner shall issue a final order upon such hearing and a finding that a violation has occurred.

3. All penalties and fees, along with monetary wages and/or fringe benefits due, shall be paid within 30 days of the date of the final order. Failure to pay such monetary wages and/or fringe benefits, fees and/or penalties shall result in a judgment being obtained in a court of competent jurisdiction.

4. All payments shall be made payable to the "Commissioner of Labor and Workforce Development." All payments shall be made by certified check or money order, or payable in a form suitable to the Commissioner.

(c) In assessing an administrative penalty pursuant to this chapter, 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;
2. The past history of previous violations by the contractor;
3. The good faith of the contractor;
4. The size of the contractor's business; and
5. Any other factors which the Commissioner deems to be appropriate in determining the penalty to be assessed.

12:64-4.3 Administrative fees

(a) The Commissioner may supervise the payment of amounts due to workers under the Act, and the contractor may be required to make these payments to the Commissioner to be held in a special account in trust for the worker, and paid on order of the Commissioner directly to the worker or workers affected.

(b) The contractor shall pay the Commissioner an administrative fee on all payments due to workers pursuant to *N.J.S.A. 34:11-56.65*.

(c) A schedule of the administrative fees is set forth in Table 4.3(c) below:

Table 4.3(c)

Schedule of Administrative Fees

1. First violation -- 10 percent of the amount of any payment made to the Commissioner pursuant to the Act.

2. Second violation -- 18 percent of the amount of any payment made to the Commissioner pursuant to the Act.

3. Third and subsequent violations -- 25 percent of the amount of any payment made to the Commissioner pursuant to the Act.

12:64-4.4 Interest

(a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:

1. When a contractor has unreasonably delayed compliance with an order of the Commissioner to pay monetary wages or fringe benefits owed to a worker;

2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the contractor over an extensive period of time; or

3. Where the Commissioner finds sufficient cause based on the particular case.

(b) Where applicable, interest deemed owed to a worker shall be calculated at the annual rate as set forth in *New Jersey Court Rules, R.4:42-11*.

12:64-4.5 Hearings

(a) No assessment of monetary wages, fringe benefits, fees or penalties shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with written notification of the violation and the amount of the monetary wages, fringe benefits, fees and/or penalties, and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following the receipt of the notice of assessment. All contested cases shall be heard pursuant to the Administrative Procedures Act, *N.J.S.A. 52:14B-1* et seq. and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*. The filing of a request for a hearing regarding monetary wages, fringe benefits, fees or penalties shall not preclude the Commissioner from pursuing other remedies under the Act.

(b) All requests for a hearing shall be reviewed by the Office of Wage and Hour Compliance to determine if the dispute can be resolved at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached or if the review indicates that no settlement conference is warranted, the case shall be forwarded to the Office of Administrative Law for a formal hearing.

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

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

(e) If the contractor, or a designated representative thereof, fails to appear at a requested hearing, the Commissioner may, for good cause shown, reschedule a hearing.

(f) If the Commissioner does not authorize such a rescheduled hearing, then the Commissioner shall issue a final agency determination.

(g) Payment of the monetary wages, fringe benefits, fees and/or penalties is due when a final agency determination is issued.

(h) Upon final determination, the monetary wages, fringe benefits, fees and penalties may be recovered with costs in a summary proceeding commenced by the Commissioner.

12:64-4.6 Discharge or discrimination against worker making complaint

(a) A contractor who discharges or in any other manner discriminates against any worker because such worker has made any complaint to the contractor, to the contracting State agency, the State Treasurer, or to the Commissioner that the worker has not been paid monetary wages or fringe benefits in accordance with the provisions of the Act, or because such worker has caused to be instituted, or is about to cause to be instituted, any proceeding under or related to the Act, or because such worker has testified or is about to testify in any such proceeding, shall be guilty of a disorderly persons offense and shall, upon conviction therefore, be fined not less than \$ 100.00, nor more than \$ 1,000.

(b) As an alternative to, or in addition to, any sanctions imposed under (a) above, the Commissioner may under *N.J.S.A. 34:11-56.66* assess and collect administrative penalties as provided for in N.J.A.C. 12:64-4.2.

CHAPTER 65

CONSTRUCTION INDUSTRY INDEPENDENT CONTRACTOR ACT RULES

SUBCHAPTER 1. STOP-WORK ORDERS

- 12:65-1.1. Purpose
- 12:65-1.2. Scope
- 12:65-1.3. Definitions
- 12:65-1.4. Stop-work order--second violation of the provisions of the Act
- 12:65-1.5. Stop-work order--third violation or subsequent violations of the provisions of the Act
- 12:65-1.6. Release of stop-work order
- 12:65-1.7. Periodic reports—requirements

SUBCHAPTER 1. STOP-WORK ORDERS

12:65-1.1. Purpose

The purpose of this subchapter is to set forth both the standard and procedure for the issuance by the Commissioner of a stop-work order and the release of same under N.J.S.A. 34:20-7c through 7f.

12:65-1.2. Scope

The provisions of this subchapter shall apply to each "employer" as that term is defined in N.J.A.C. 12:65-1.3.

12:65-1.3. Definitions

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

"Act" means N.J.S.A. 34:20-1 et seq., the Construction Industry Independent Contractor Act.

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

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

"Employer" means an individual, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof who is primarily engaged in the business of, or enters into a contract for, making improvements to real property and includes any subcontractor or lower tier contractor.

"Employment relationship" or "employment" means "employment" as that term is defined within N.J.S.A. 34:20-4 (commonly referred to as "the ABC Test").

"Final order" means either a final administrative determination of the Commissioner issued following adjudication of a matter as a contested case pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, or where the Department has made a finding regarding a violation of law or rule and/or regarding the levying of a penalty pursuant to law or rule, has notified the violator of same and where the violator has either expressly waived the right

to a hearing or has waived the right to a hearing by virtue of having failed to request same within the appropriate time limit established by either law or rule.

"Properly classify" means that with regard to an individual with whom an employer has an employment relationship the employer keeps records, pays wages, benefits, taxes and other contributions required by an employer relative to those with whom the employer has an employment relationship under N.J.S.A. 34:11-56.25 et seq. (the New Jersey Prevailing Wage Act), N.J.S.A. 43:21-1 et seq. (the Unemployment Compensation Law), N.J.S.A. 43:21-25 et seq. (the Temporary Disability Benefits Law), N.J.S.A. 54A:1-1 et seq. (the New Jersey Gross Income Tax Act), and N.J.S.A. 34:11-4.1 et seq. (New Jersey Wage Payment law), or N.J.S.A. 34:11-56a et seq. (the New Jersey Wage and Hour Law).

"Violation of the provisions of the Act" means that a final order(s) has been issued by the Commissioner indicating that the employer has failed to properly classify an individual and, with regard to that individual, that the employer has failed to pay wages, benefits, taxes or other contributions required by N.J.S.A. 34:11-56.25 et seq. (the New Jersey Prevailing Wage Act), N.J.S.A. 43:21-1 et seq. (the Unemployment Compensation Law), N.J.S.A. 43:21-25 et seq. (the Temporary Disability Benefits Law), N.J.S.A. 54A:1-1 et seq. (the New Jersey Gross Income Tax Act), and N.J.S.A. 34:11-4.1 et seq. (New Jersey Wage Payment law), or N.J.S.A. 34:11-56a et seq. (the New Jersey Wage and Hour Law).

12:65-1.4. Stop-work order--second violation of the provisions of the Act

(a) For a second violation of the provisions of the Act, the Commissioner shall, within 72 hours of the violation of the provisions of the Act, issue a stop-work order requiring the cessation of all business operations of the violator at every site at which the violation of the provisions of the Act occurred.

(b) The stop-work order under (a) above shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite.

(c) The stop-work order under (a) above shall remain in effect until the Commissioner issues an order releasing the stop-work order under N.J.A.C. 12:65-1.6.

12:65-1.5. Stop-work order--third violation or subsequent violations of the provisions of the Act

(a) For a third or subsequent violation of the provisions of the Act, the Commissioner shall, within 72 hours of the violation of the provisions of the Act, issue a stop-work order requiring the cessation of all business operations of the violator.

(b) The stop-work order in (a) above shall take effect when served upon the employer.

(c) The stop-work order in (a) above shall remain in effect until the Commissioner issues an order releasing the stop-work order under N.J.A.C. 12:65-1.6.

12:65-1.6. Release of stop-work order

(a) The Commissioner shall issue an order releasing the stop-work order upon a showing by the employer against whom the stop-work order has been issued under either N.J.A.C. 12:65-1.4 or 1.5 that:

1. The employer against whom the stop-work order has been issued is properly classifying the individual(s); and

2. The employer against whom the stop-work order has been issued has paid any penalty assessed against it by the Department under the Act.

(b) As a condition of release of a stop-work order under this section, the Commissioner may require the employer against whom the stop-work order had been issued to file with the Department periodic reports, the requirements of which are set forth in N.J.A.C. 12:65-1.7, for a probationary period of two years.

12:65-1.7. Periodic reports—requirements

(a) Where the Commissioner has conditioned the release of a stop-work order upon the filing of periodic reports for a two-year probationary period under N.J.A.C. 12:65-1.6(b), the periodic report shall consist of the following, which shall be filed by the employer with the Division of Wage and Hour Compliance, within the Department, on a quarterly basis pursuant to the schedule set forth at N.J.A.C. 12:16-5.2(a):

1. A copy of the payroll records required to be kept by each employer under N.J.A.C. 12:16-2.1.

CHAPTER 63

NOTIFICATION CONCERNING HEALTH BENEFITS PLANS

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:63-1.1 Purpose
- 12:63-1.2 Scope
- 12:63-1.3 Definitions

SUBCHAPTER 2. EMPLOYER RESPONSIBILITIES

- 12:63-2.1 Notice of health benefits plan termination
- 12:63-2.2 Notice of health benefits plan change

SUBCHAPTER 3 INVESTIGATIONS

- 12:63-3.1 Right to enter and investigate

SUBCHAPTER 4 PENALTIES AND HEARINGS

- 12:63-4.1 Penalties
- 12:63-4.2 Hearings

SUBCHAPTER 1. GENERAL PROVISIONS

12:63-1.1 Purpose

The purpose of this chapter is to ensure that employees receive adequate notification from their employers of changes to or termination of employer-sponsored health benefits plans.

12:63-1.2 Scope

This chapter shall apply to employers and employees as those terms are defined within N.J.A.C. 12:63-1.3.

12:63-1.3 Definitions

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

"Carrier" or "health insurer" means any entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the Commissioner of Banking and Insurance, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company authorized to issue health insurance, a health maintenance organization, a hospital service corporation, medical service corporation and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services. The term "carrier" or "health insurer" shall not include a joint insurance fund established pursuant to State law.

"Change" means any modification to a health benefits plan, including any modification to the level of benefits within an existing health benefits plan, whether that modification results in an increase or diminution in the level of benefits, or a change in the identity of the carrier or health insurer, whether that

change in carrier or health insurer results in an increase, diminution or zero-net-effect in the level of benefits.

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

"Compliance Officer" means the person authorized by the Commissioner of the New Jersey Department of Labor and Workforce Development to conduct investigations under this chapter.

"Employee" means any person suffered or permitted to work by an employer.

"Employer" means any individual, partnership, association, joint-stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of the same, employing any person in this State. For the purposes of this chapter, the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.

"Establishment" means a single physical location where business is conducted or where services or operations are performed, such as a regional office, area office, installation or facility.

"Field site" means a physical location where an employer performs services or operations, but does not maintain an office or facility.

"Health benefits plan" means a health benefits plan as defined in *N.J.S.A. 26:2S-2*.

SUBCHAPTER 2. EMPLOYER RESPONSIBILITIES

12:63-2.1 Notice of health benefits plan termination

(a) Where an employer who provides a health benefits plan to its employees in this State is terminating the health benefits plan, the employer shall provide notice of the plan termination to all employees covered by the health benefits plan at least 30 calendar days prior to the date upon which coverage under the health benefits plan is scheduled to cease.

(b) Notice under (a) above shall:

1. Be in writing;
2. Include the effective date of the plan termination; and
3. Provide the name and contact information of an individual to whom the employee may direct questions pertaining to statutory rights to continuation of coverage.

(c) The employer shall deliver notice under (a) above in such a manner that there is verifiable proof that such delivery has occurred.

12:63-2.2 Notice of health benefits plan change

(a) Where an employer who provides a health benefits plan to its employees in this State is changing the health benefits plan, the employer shall provide notice of the plan change to all employees covered by the health benefits plan on or before the end of the first scheduled work day following receipt by the employer of notification from the health insurer that its employees will be covered by the new plan.

(b) Notice under (a) above shall:

1. Be in writing;
2. Include the effective date of the plan change;
3. Include a description of the plan change;
4. Include the name of the new health insurer, if any; and
5. Provide the name and contact information of an individual to whom the employee may direct questions regarding administration or management of the changed health benefits plan.

(c) The employer shall deliver notice under (a) above in such a manner that there is verifiable proof that such delivery has occurred.

SUBCHAPTER 3. INVESTIGATIONS

12:63-3.1 Right to enter and investigate

(a) The Compliance Officer shall enter without delay and at reasonable times any establishment or field site of any employer where work is performed by an employee if there is reason to believe that a violation of this chapter has occurred or is occurring and to conduct such investigations as the Compliance Officer shall deem to be necessary.

(b) Employers shall permit the Compliance Officer to question privately any employee or managerial executive and review all records relating to the requirements in N.J.A.C. 12:63-2.

SUBCHAPTER 4. PENALTIES AND HEARINGS

12:63-4.1 Penalties

(a) Any violations of any of the provisions of this chapter shall be punishable by a monetary penalty in the following amounts:

1. First violation - Not more than \$200.00 per employee covered by the health benefits plan; and
2. Second and subsequent violations - \$200.00 per employee covered by the health benefits plan.

(b) Penalties imposed under this section may be recovered with costs in a civil action commenced by the Commissioner by a summary proceeding under the Penalty Enforcement Law, *N.J.S.A. 2A:58-1* et seq.

(c) The Commissioner may compromise and settle any claim for penalties under this section in such amount as the Commissioner may deem appropriate and equitable under all of the circumstances, including, but not limited to:

1. The past record of compliance with the provisions of the chapter by the person cited;
2. The degree of cooperation afforded to the Commissioner's representatives by the person cited in securing compliance with the provisions of the chapter; and
3. Whether the violation was willful in nature.

12:63-4.2**Hearings**

(a) No penalty shall be levied pursuant to N.J.A.C. 12:63-4.1 unless the alleged violator is provided with:

1. Notification of the violation;
2. Notification of the amount of the penalty to be imposed; and
3. An opportunity to request a formal hearing.

(b) A request for a formal hearing shall be made in writing and received by the Commissioner within 15 calendar days following the employer's receipt of the notice of violation.

(c) All hearings shall be conducted pursuant to the Administrative Procedures Act, *N.J.S.A. 52:14B-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

(d) If a hearing is not requested within the 15-day time limit set forth in (b) above, the notice of violation shall become a final order of the Commissioner.

(e) The alleged violator may request the initiation of a settlement conference at the time that the request for a formal hearing is made. If a settlement conference is requested, or the Department determines that a settlement conference would be useful, the settlement conference shall be scheduled and conducted by the Department within 30 days of the date upon which the Department receives the request for a formal hearing.

(f) If a settlement is not agreed upon, or no settlement conference is scheduled, a request for a formal hearing shall be transmitted to the Office of Administrative Law (OAL).

(g) Payment of the penalty shall be due when a final agency determination is issued or when a notification of violation becomes a final decision as the result of no appeal having been filed by the violator.

(h) All payments shall be made payable to the Department of Labor and Workforce Development in the form of a certified check or money order, or such other form as the Department deems suitable.

CHAPTER 67

PROHIBITED DISCRIMINATION AGAINST UNEMPLOYED INDIVIDUALS

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:67-1.1 Purpose and scope
- 12:67-1.2 Definitions
- 12:67-1.3 Violations
- 12:67-1.4 Administrative penalties
- 12:67-1.5 Appeals

SUBCHAPTER 1. GENERAL PROVISIONS

12:67-1.1 Purpose and scope

(a) The purpose of this chapter is to effectuate P.L. 2011, c. 40.

(b) The chapter is applicable to each employer or employer's agent, representative or designee which publishes in print or on the Internet an advertisement for any job vacancy in the State of New Jersey.

12:67-1.2 Definitions

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

"Act" means P.L. 2011, c. 40.

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

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

"Director" means the Director of the Division of Wage and Hour Compliance, within the Department of Labor and Workforce Development, or his or her designee.

12:67-1.3 Violations

(a) A violation of the Act shall occur when, unless otherwise permitted by the provisions of N.J.S.A. 11A or any other law, rule or regulation, an employer or an employer's agent, representative or designee knowingly or purposefully publishes, in print or on the Internet, an advertisement for any job vacancy in the State of New Jersey that contains one or more of the following:

1. Any provision stating that the qualifications for a job include current employment;
2. Any provision stating that the employer or employer's agent, representative, or designee will not consider or review an application for employment submitted by any job applicant currently unemployed; or
3. Any provision stating that the employer or employer's agent, representative, or designee will only consider or review applications for employment submitted by job applicants who are currently employed.

(b) Nothing in (a) above shall be construed to prohibit an employer or employer's agent, representative, or designee from publishing in print or on the Internet an advertisement for any job vacancy in the State of New Jersey that contains any provision setting forth any other qualifications for a job, as permitted by law, including but not limited to, the holding of a current and valid professional or occupational license,

certificate, registration, permit or other credential, or a minimum level of education, training or professional, occupational or field experience.

(c) Nothing in (a) above shall be construed to prohibit an employer or employer's agent, representative, or designee from publishing in print or on the Internet an advertisement for any job vacancy that contains any provision stating that only applicants who are currently employed by such employer will be considered.

12:67-1.4 Administrative penalties

(a) When the Director finds that an employer or employer's agent, representative, or designee has violated the Act, the Director is authorized to assess an administrative penalty against the employer in the amounts that follow:

1. First violation - not more than \$ 1,000;
2. Second violation - not more than \$ 5,000; and
3. Third and subsequent violations - not more than \$ 10,000.

(b) No administrative penalty shall be levied pursuant to this chapter unless the Director provides the alleged violator with written notification of the violation, the amount of the penalty, and the opportunity to appeal the penalty assessment to the Commissioner.

(c) In determining what constitutes an appropriate administrative penalty for a particular violation, the following factors shall be considered, where applicable:

1. The seriousness of the violation;
2. The past history of previous violations by the employer;
3. The good faith of the employer;
4. The size of the employer; and
5. Any other factors which are deemed to be appropriate under the circumstances.

12:67-1.5 Appeals

(a) When the Director assesses an administrative penalty under *N.J.A.C. 12:67-1.4*, the employer shall have the right to file an appeal with the Commissioner.

(b) An appeal must be received by the Commissioner within 15 business days following receipt by the employer of the notification described in *N.J.A.C. 12:67-1.4(b)*.

(c) The Commissioner shall decide any appeal filed under (b) above on the written record or shall provide a hearing pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and *52:14F-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

CHAPTER 68

THE OPPORTUNITY TO COMPETE ACT RULES

Effective Date: December 7, 2015

SUBCHAPTER 1. GENERAL PROVISIONS

12:68-1.1	Purpose and scope
12:68-1.2	Definitions
12:68-1.3	Violations
12:68-1.4	Exemptions
12:68-1.5	Administrative penalties
12:68-1.6	Appeals

SUBCHAPTER 1. GENERAL PROVISIONS

12:68-1.1 Purpose and scope

(a) The purpose of this chapter is to effectuate P.L. 2014, c. 32.

(b) The chapter is applicable to all employers and applicants for employment, as those terms are defined in.

12:68-1.2 Definitions

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

"A position in corrections" means employment with a State, county, or municipal employer in the supervision of offenders pursuant to sentencing or other judicial disposition, or the supervision of alleged offenders awaiting and/or during formal adjudication; as in corrections officers employed by the State Department of Corrections or the Juvenile Justice Commission; county corrections officers, juvenile detention officers; county probation officers, parole officers employed by the State Parole Board or the Juvenile Justice Commission; and any sheriff, undersheriff, or sheriff's officer.

"A position in emergency management" means employment with a State, county or municipal employer in the coordination of emergency planning, preparedness, risk reduction, response, and recovery. For the purpose of this definition, the term "emergency" shall include, but not necessarily be limited to, acts of terrorism, sabotage, or other hostile action, public disorder, industrial accidents, communication failures, fire, and natural disasters (such as hurricanes, floods, and earthquakes).

"A position in homeland security, a position in" means employment with the State Office of Homeland Security and Preparedness, or with any other State, county, or municipal counter-terrorism agency.

"A position in law enforcement " means employment:

1. With a government employer, including, but not limited to, a police department or law enforcement agency in a State department, office, or commission, a county sheriff's office, county prosecutor's office, or the Divisions of Criminal Justice or State Police, the Juvenile Justice Commission, or the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety;

2. In a position as a police officer, detective, criminal investigator, or other law enforcement officer statutorily empowered to act for the detection, investigation, arrest, or conviction of persons violating the criminal laws of this State.

The phrase, "position in law enforcement," shall also mean employment as a county prosecutor or assistant county prosecutor in a county prosecutor's office or as an assistant attorney general or deputy attorney general in the Division of Criminal Justice or the Office of the Insurance Fraud Prosecutor.

"A position in the judiciary" means a Justice of the New Jersey Supreme Court, a Judge of the New Jersey Superior Court, a Judge of the New Jersey Tax Court, or a municipal judge.

"Act" means P.L. 2014, c. 32.

"Advertisement" means any circulation, mailing, posting, or any other form of publication, utilizing any media, promoting an employer or intending to alert its audience, regardless of size, to the availability of any position of employment.

"Applicant for employment" means any person whom an employer considers when identifying potential employees, through any means, including, but not limited to, recruitment, solicitation, or seeking personal information, or any person who requests to be considered for employment by an employer, or who requests information from an employer related to seeking employment, and shall include any person who currently is an employee of the employer.

"Apprentice" means an individual who is registered in good standing in an apprenticeship program approved or certified by the Office of Apprenticeship within the United States Department of Labor.

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

"Criminal record" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, release, or conviction, including, but not limited to, any sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of probation, or a sentence of conditional discharge.

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

"Director" means the Director of the Division of Wage and Hour Compliance, within the Department of Labor and Workforce Development, or his or her designee.

"Employee" means a person who is hired for a wage, salary, fee, or payment to perform work for an employer, but excludes any person employed in the domestic service of any family or person at the person's home, any independent contractors, or any directors or trustees. The term also shall include interns and apprentices, whether paid or unpaid.

"Employer" means any person, company, corporation, firm, labor organization, or association, which has 15 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 this State, including the State, any county or municipality, or any instrumentality thereof. The term shall include job placement and referral agencies and other employment agencies, but excludes the United States or any of its departments, agencies, boards, or commissions, or any employee or agent thereof.

"Employment" means any occupation, vocation, job, or work with pay, including temporary or seasonal work, contingent work, and work through the services of a temporary or other employment agency; any form of vocational apprenticeship; or any internship. The physical location of the prospective employment shall be in whole, or substantial part, within this State. For the purpose of this definition, the physical location of the prospective employment shall be in substantial part within this State if the employer has reason to believe at the outset of the initial employment application process that the percentage of work hours that will be spent performing work functions within New Jersey by the successful candidate for prospective employment will equal or exceed 50 percent of the successful candidate's total work hours.

"Employment application" means a form, questionnaire, or similar document, or collection of documents, that an applicant for employment is required by an employer to complete.

"Fifteen or more employees over 20 calendar weeks" means 15 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

"Initial employment application process" means the period beginning when an applicant for employment first makes an inquiry to an employer about a prospective employment position or job vacancy or when an employer first makes any inquiry to an applicant for employment about a prospective employment position or job vacancy, and ending when an employer has conducted a first interview of an applicant for employment, whether the interview has been conducted in person or by any other means.

"Intern" means an individual, as a student or recent graduate, working as a trainee to gain practical experience in an occupation.

"Interview" means any live, direct contact by the employer with the applicant, whether in person, by telephone, or by video conferencing, to discuss the employment being sought or the applicant's qualifications. "Interview" shall not mean the exchange of e-mails or the completion of a written or electronic questionnaire.

12:68-1.3 Violations

(a) A violation of the Act shall occur when an employer requires an applicant for employment to complete any employment application during the initial employment application process that makes any inquiries regarding an applicant's criminal record.

(b) A violation of the Act shall occur when an employer makes any oral or written inquiry to anyone, including to the applicant, during the initial employment application process regarding an applicant's criminal record.

(c) Notwithstanding (a) or (b), above, if an applicant voluntarily discloses, either orally or in writing, during the initial employment application process, any information regarding the applicant's criminal record, the employer may make inquiries to anyone, including to the applicant, during the initial employment application process regarding the applicant's criminal record.

(d) Unless otherwise permitted or required by law, an employer shall not knowingly or purposefully publish, or cause to be published, any advertisement that solicits applicants for employment where that advertisement explicitly provides that the employer will not consider any applicant who has been arrested or convicted of one or more crimes or offenses.

(e) Nothing set forth in this section shall be construed to prohibit an employer, after the initial employment application process has concluded, from requiring an applicant for employment to complete an employment application that makes any inquiries regarding an applicant's criminal record or, after the initial employment application process has concluded, from making any oral or written inquiries to anyone, including to the applicant, regarding an applicant's criminal record.

(f) Nothing set forth in this section shall be construed to prohibit an employer from refusing to hire an applicant for employment based upon the applicant's criminal record, unless the criminal record or relevant portion thereof has been expunged or erased through executive pardon, provided that such refusal is consistent with other applicable laws, rules, and regulations.

(g) Nothing set forth in this section shall be construed to prohibit an employer from publishing, or causing to be published, an advertisement that contains any provision setting forth any other qualifications for employment, as permitted by law, including, but not limited to, the holding of a current and valid professional or occupational license, certificate, registration, permit or other credential, or a minimum level of education, training, or professional, occupational, or field experience.

(h) Nothing set forth in this section shall be construed to prohibit an employer who does business, employs persons, or takes applications for employment in at least one state other than New Jersey, from including an inquiry regarding criminal record on an employment application, so long as immediately preceding the criminal record inquiry on the employment application it states that an applicant for a position the physical location of which will be in whole, or substantial part, in New Jersey is instructed not to answer this question.

12:68-1.4 Exemptions

(a) The provisions of N.J.A.C. 12:68-1.3(a) and (b) shall not prohibit an employer, under any of the following circumstances, from requiring an applicant for employment to complete an employment application during the initial employment application process that makes any inquiries regarding an applicant's criminal record or from making any oral or written inquiries during the initial application process to anyone, including to the applicant, regarding an applicant's criminal record:

1. The employment sought or being considered is for a position in law enforcement, corrections, the judiciary, homeland security, or emergency management;

2. The employment sought or being considered is for a position where a criminal history record background check is required by law, rule, or regulation, or where an arrest or conviction by the person for one or more crimes or offenses would or may preclude the person from holding such employment as required by any law, rule, or regulation, or where any law, rule, or regulation restricts an employer's ability to engage in specified business activities based on the criminal records of its employees; or

3. The employment sought or being considered is for a position designated by the employer to be part of a program or systematic effort designed predominantly or exclusively to encourage the employment of persons who have been arrested or convicted of one or more crimes or offenses.

(b) The provisions of N.J.A.C. 12:68-1.3(d) shall not apply to any advertisement that solicits applicants for a position in law enforcement, corrections, the judiciary, homeland security, or emergency management, or any other employment position where a criminal history record background check is required by law, rule, or regulation, or where an arrest or conviction by the person for one or more crimes or offenses would or may preclude the person from holding such employment as required by any law, rule, or regulation, or where any law, rule, or regulation restricts an employer's ability to engage in specified business activities based on the criminal records of its employees.

12:68-1.5 Administrative penalties

(a) When the Director finds that an employer has violated the Act, the Director is authorized to assess an administrative penalty against the employer in the amounts that follow:

1. First violation - not more than \$ 1,000;

2. Second violation - not more than \$ 5,000; and
3. Third and subsequent violations - not more than \$ 10,000.

(b) No administrative penalty shall be levied pursuant to this chapter unless the Director provides the alleged violator with written notification of the violation, the amount of the penalty, and the opportunity to appeal the penalty assessment to the Commissioner.

(c) In determining what constitutes an appropriate administrative penalty for a particular violation, the following factors shall be considered, where applicable:

1. The seriousness of the violation;
2. The past history of previous violations by the employer;
3. The good faith of the employer;
4. The size of the employer; and
5. Any other factors which are deemed to be appropriate under the circumstances.

12:68-1.6 Appeals

(a) When the Director assesses an administrative penalty under N.J.A.C. 12:68-1.5, the employer shall have the right to file an appeal with the Commissioner.

(b) An appeal must be received by the Commissioner within 15 business days following receipt by the employer of the notification described in N.J.A.C. 12:68-1.5(b).

(c) The Commissioner shall decide any appeal filed under (b) above on the written record or shall provide a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

The New Jersey Department of Labor and Workforce Development is an equal opportunity employer with equal opportunity programs. Auxiliary aids and services are available upon request to individuals with disabilities.



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