

# New Jersey Wage and Hour Law Governing Employment in Hotel & Motel Occupations

Order No.3

## Wages

### Minimum Wage Rate

For each hour of working time for all employees in these occupations: **\$12.00** per hour beginning January 1, 2021

### Food Service and Other Occupations in Which Gratuities are Customary

Employers subject to the Fair Labor Standards Act must pay the Federal cash wage rate of \$4.13 and must demonstrate that the balance of the minimum wage required under State law is paid through gratuities in accordance with N.J.A.C. 12:56-4 and 12:56-8. Employers not subject to the Fair Labor Standards Act must demonstrate that the total wage, including cash and gratuities, equals the minimum wage required under State law in accordance with N.J.A.C. 12:56-4 and 12:56-8. Pursuant to N.J.A.C. 12:56-8.4(b), tips are the property of the employee who received them. This means that no portion of tip monies may be diverted by the employer to offset the cost of credit card fees, or for any other reason.

### Overtime Rates

Overtime at one and one-half times the regular hourly wage rate shall be paid for all hours worked in excess of forty (40) in any week starting November 1, 1970.

### Definitions

1. *Hotel & Motel Occupations.* The term "Hotel and Motel Occupations" shall mean any activity as an employee for an establishment kept, used, maintained, advertised as or held out to be a place where sleeping accommodations are supplied for pay to transient or permanent guests, in which fifteen or more rooms are available for rental furnished or unfurnished; except this definition shall not include summer camps and country clubs when these activities are not part of a hotel or motel establishment.
2. *Seasonal Hotels & Motels.* Those in which, during the previous business year, not less than two-thirds of the gross receipts is received in a continuous period of three months or less.
3. *Regular Hourly Wage.* The term "Regular Hourly Wage" shall mean the amount that an employee is regularly paid for each hour of work as determined by dividing the total hours of work during the week into the employee's total earnings for the week, exclusive of overtime premium pay.

### Administrative Regulations

Employer substantiation of gratuities received by an employee and the cost of food and lodging shall be as provided in this order, the law and regulations.

Food and lodging supplied to employees shall not be included in wages for those hours worked in excess of forty (40) hours per week.

Where cash wages have been established as a condition of employment through agreement between the employer and employee, gratuities, food and lodging shall not be included as a part of such cash wages.

Meals and lodging which the employer requires the employee to accept shall be considered for the convenience of the employer and the cost thereof shall not be considered applicable as minimum wages.

Regulations previously promulgated under N.J.S.A. 34:11-56a et seq., not in conflict with this wage order, are applicable.

### Penalties

**Any employer** who violates any provisions of this act shall be guilty of a disorderly persons offense and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000.

As an alternative to or in addition to any other sanctions provided by law for offense 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.

The employer shall also pay the commissioner an administrative fee on wages equal to not less than 10% or more than 25% of any wages due to employees.

Penalties for violation of this order are provided for by N.J.S.A. 34:11-56a22.

### Effective Date

New Jersey State Wage and Hour Law - Order No. 3 promulgated under the provisions of N.J.S.A. 34:11-56a et seq. became effective November 6, 1968, and subsequently as amended at N.J.S.A. 34:11-56a4.

### Court Interpretation Re: Gratuities

Pursuant to the mandate of the Superior Court of New Jersey, Appellate Division, dated March 25, 1969, these regulations were modified on the 11th day of April, 1969, as follows:

The cash wage rates established in this order shall be acceptable in those occupations where gratuities, or food, and/or lodging are actually received. In no event shall this paragraph be construed to deny to an employee the right to claim additional compensation, or to an employer to claim a credit in excess of that so established where it is proven to the satisfaction of the Department that the actual amount of the gratuities received is either more or less than the amount of credit herein established.

**NOTE:** Food service occupations not in hotels or motels are covered by the Food Service Occupations Regulations effective August 8, 1968, as amended by statute.

Enforced by: Division of Wage and Hour Compliance • NJ Department of Labor and Workforce Development • PO Box 389 • Trenton, NJ 08625-0389 • 609-292-2305

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