

Food Service Occupations Regulations

N.J.S.A. 34:11-56A et seq as amended

Wages

Employees including those under 18 years of age employed at restaurant occupations within the State of New Jersey shall be paid a minimum wage rate of not less than:

Basic Minimum Wage: \$13.00 for each hour of working time, beginning January 1, 2022

Food Service & Other Occupations in Which Gratuities are Customary

Employers subject to the Fair Labor Standards Act must pay the Federal cash wage rate of \$5.13 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 with the effective date of this regulation.

Definitions

1. The term "**Restaurant Occupation**" as used in this regulation shall mean any activity of an employee in the Restaurant Industry. The term "Restaurant Industry" as used herein shall include any eating or drinking place which prepares and offers food or beverage for human consumption either in any of its premises or by such service as catering, banquets, box lunch or curb service.
2. 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 these regulations. Regulations previously promulgated under N.J.S.A. 34:11-56a et seq. not in conflict with this regulation, are applicable.

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 or the employees' collective bargaining

agent, gratuities, food and lodging shall not be included as part of such cash wages.

Meals and lodging shall be considered applicable toward the minimum wage unless the employee elects not to receive such meals and lodging.

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

These regulations were pursuant to N.J.S.A. 34:11-56a et seq. effective August 15, 1968, and subsequently as amended at N.J.S.A. 34:11-56a4.

Penalties

Any employer who violates any provisions of this act shall be guilty of a disorderly persons violation 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 violations 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 et seq., including penalties for discrimination or dismissal of employees.

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 in hotels and motels are covered by Order No. 3 effective November 6, 1968 as amended by statute.

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