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NEW JERSEY REGISTER
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VOLUME 45, ISSUE 11

ISSUE DATE: JUNE 3, 2013

RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
NEW JERSEY STATE BOARD OF MEDIATION**

45 N.J.R. 1350(a)

Proposed New Rules: *N.J.A.C. 12:105*

[Click here to view Interested Persons Statement](#)

Arbitration

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(e), and 34:13A-1* et seq., specifically, 34:13A-11.

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

Proposal Number: PRN 2013-098.

A **public hearing** on the expired rules proposed herein as new rules will be held on the following date at the following location:

Friday, June 21, 2013
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
2nd Floor, Large Conference Room
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by August 2, 2013 to:

David Fish, Executive Director
Office of Legal and Regulatory Services
New Jersey Department of Labor and Workforce Development

P.O. Box 110 - 13th Floor
Trenton, New Jersey 08625-0110
Fax to: (609) 292-8246

The agency proposal follows:

Summary

The rules at *N.J.A.C. 12:105*, which govern arbitration through the New Jersey State Board of Mediation, expired on April 21, 2013, pursuant to *N.J.S.A. 52:14B-5.1.b*, and are proposed herein as new rules. The chapter applies to private employers and employees who either have provisions for arbitration in their collective bargaining agreements or who voluntarily agree to abide by the rules for arbitration. The Department of Labor and Workforce Development (Department) and the New Jersey State Board of Mediation (Board) have reviewed these rules and have determined them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated. Accordingly, the Department proposes expired *N.J.A.C. 12:105* as new rules with no amendments.

A summary of the expired subchapters of *N.J.A.C. 12:105* follows:

N.J.A.C. 12:105-1 sets forth the general provisions of the chapter and states that the rules are deemed to be a part of an arbitration agreement between parties whenever in their collective bargaining agreements or submissions they have provided for arbitration through the New Jersey State Board of Mediation. The subchapter also sets forth the method of interpretation and application of the rules.

N.J.A.C. 12:105-2 addresses the initiation of arbitration proceedings. Specifically, the subchapter sets forth the methods by which an arbitration proceeding can be commenced, such as through a collective bargaining agreement. Additionally, arbitration can be initiated by the Board, regardless of the existence of a collective bargaining agreement, upon filing of a written agreement between the parties to arbitrate under the rules of the Board. The subchapter also addresses the method for requesting expedited arbitration and procedural determinations.

N.J.A.C. 12:105-3 concerns the appointment of arbitrators. The subchapter discusses the method for nomination of arbitrators, conflicts of interest, and the filling of vacancies.

N.J.A.C. 12:105-4 addresses the arbitration hearing itself. The subchapter outlines the procedures to be followed for notifying the parties of the date, time, and place of the hearing. The subchapter also requires arbitrators to sign an oath and requires the parties to sign an original and three copies of an arbitrator submission form prior to arbitration. The subchapter explains the legal relationship between an arbitrator and the parties to an arbitration. In addition, the subchapter addresses postponements and adjournments, representation by counsel, the taking of a stenographic record, attendance at hearings, decision-making by the arbitration board, evidence, the submission of briefs, the inspection authority of arbitrators, close of hearings, and reopening of hearings.

N.J.A.C. 12:105-5 concerns the award made by an arbitrator. The subchapter sets forth the time limits for rendering decisions and the recourse for failure to render a timely decision. The subchapter also prescribes the form in which an award shall be made and allows an arbitrator, upon agreement of the parties, to set forth the terms of a settlement in an award. The remainder of the subchapter addresses the delivery of the award, explains that an award is final and binding subject only to due process requirements, sets forth the arbitrator's status subsequent to the rendering of a decision, and establishes the waiver of a right to object.

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

Social Impact

The expired rules proposed herein as new rules have had and would continue to have a positive social impact in that they have greatly assisted and would continue to greatly assist in the resolution of disputes between private sector employers and their employees.

Economic Impact

The expired rules proposed herein as new rules have provided and would continue to provide procedures to be followed in arbitration proceedings between private sector employers and employees. These arbitrations would continue to

reduce conflicts, thereby minimizing economic loss to both employers and employees, as well as citizens who utilize employer products and services. The use of arbitration may also result in cost reductions in the resolution of disputes between labor and management.

Federal Standards Statement

The expired rules proposed herein as new rules do not contain any standards or requirements that exceed those imposed under the Federal Labor Management Relations Act, *29 U.S.C. § 141* et seq. There are no other Federal standards applicable to the expired rules proposed herein as new rules. Therefore, a Federal standards analysis is not necessary.

Jobs Impact

The Department does not anticipate an increase or decrease in jobs as a result of the expired rules proposed herein as new rules.

Agriculture Industry Impact

The expired rules proposed herein as new rules would have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The expired rules proposed herein as new rules would not impose recordkeeping, reporting, or other compliance requirements on employers, including small businesses, as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. The procedures established for arbitration (see Summary above) would be applied to all [page=1351] businesses, regardless of size, when those businesses are subject to the rules pursuant to either a collective bargaining agreement or by voluntary consent. It would be inappropriate in this instance to apply a separate set of rules to small businesses, in that the chapter contains uniform rules for the conduct of arbitrations before the board of mediation. This arbitration process is implemented by choice and is designed to benefit all parties concerned. Furthermore, there would be no need for the use of professional services in order to ensure adherence to the expired rules proposed herein as new rules.

Housing Affordability Impact Analysis

The expired rules proposed herein as new rules would have no impact on affordable housing and would not evoke a change in the average costs associated with housing. The basis for this finding is that the expired rules proposed herein as new rules pertain to arbitration agreements between employers and employees and have nothing to do with housing.

Smart Growth Development Impact Analysis

The expired rules proposed herein as new rules will have an insignificant impact on smart growth and would not evoke a change in housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the expired rules proposed herein as new rules pertain to arbitration agreements between employers and employees and have nothing to do with housing.

Full text of the expired rules proposed herein as new rules may be found in the New Jersey Administrative Code at *N.J.A.C. 12:105*.