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RULE ADOPTIONS

**LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WAGE AND HOUR COMPLIANCE**

46 N.J.R. 626(a)

Adopted Amendment: *N.J.A.C. 12:56-6.1*

Adopted New Rule: *N.J.A.C. 12:56-7.3*

Exemption from Overtime for Employees of Common Carriers of Passengers by Motor Bus

Proposed: March 18, 2013, at *45 N.J.R. 624(b)*.

Adopted: February 20, 2014, by Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Filed: March 14, 2014, as R.2014 d.065, **without change**.

Authority: *N.J.S.A. 34:1-20*.

Effective Date: April 7, 2014.

Expiration Date: August 4, 2018.

Summary of Hearing Officer's Recommendation and Agency Response:

A public hearing regarding the proposed amendment and new rule was held on April 9, 2013, at the Department of Labor and Workforce Development. David Fish, Executive Director, was available to preside at the public hearing and to receive testimony regarding the proposed amendment and new rule. There were no attendees at the public hearing and no written comments were submitted directly to the Office of Legal and Regulatory Services. Therefore, the hearing officer recommended that the Department proceed with the amendment and new rule without change.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

Whereas *N.J.S.A. 34:11-56a4* expressly exempts from overtime requirements those individuals who are employed by "a common carrier of passengers by motor bus," the Federal Fair Labor Standards Act, *29 U.S.C. §§ 201 et seq.*, does

not contain such an exemption. Rather, Section 13(b)(1) of the Federal Fair Labor Standards Act (*29 U.S.C. § 213(b)(1)*) provides an overtime exemption for employees who are within the authority of the Secretary of Transportation pursuant to the Federal Motor Carrier Act (*49 U.S.C. §§ 13101 et seq.*). Thus, the 13(b)(1) overtime exemption applies to, among others, employees who are employed by a motor carrier or motor private carrier, as those terms are defined in *49 U.S.C. § 13102*. Under the Federal Motor Carrier Act, a "motor carrier" is a person providing motor vehicle transportation for compensation, and a "motor private carrier" is a person other than a motor carrier transporting property by motor vehicle if the person is the owner, lessee, or bailee of the property being transported, and the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise. Incidentally, *N.J.S.A. 34:11-56a4* also contains an overtime exemption for drivers, helpers, loaders, and mechanics for whom the Secretary of Transportation may prescribe maximum hours for the safe operation of vehicles pursuant to section 31502(b) of the Federal Motor Carrier Act, when those individuals are employed by a "trucking industry employer," as that term is defined within *N.J.S.A. 34:11-56a4*.

Thus, clearly, New Jersey Wage and Hour Law and the Federal Fair Labor Standards Act differ from one another. However, to characterize the particular difference at issue - that is, the existence in New Jersey law (and absence within the Federal Fair Labor Standards Act) of an express exemption for those individuals employed by common carriers of passengers by motor bus - as "exceeding standards or requirements imposed by Federal law" would be inaccurate. The two standards simply differ. And, more to the point, to the extent that the adopted amendments and new rule contain standards or requirements which differ from those imposed by Federal law, that is due to the difference, described above, between Federal and State law; State law from which the Department has no discretion to deviate. The purpose of the adopted amendments and new rule is simply to provide clarity as to the meaning of the State law (a law which the Department is duty bound to enforce), so as to eliminate confusion among the regulated community and so as to allow for efficient enforcement by the Department. For the foregoing reasons, no Federal standards analysis is required.

Full text of the adoption follows:

SUBCHAPTER 6. OVERTIME

12:56-6.1 Rate of overtime payment

For each hour of working time in excess of 40 hours in any week, except for those exemptions set forth in *N.J.S.A. 34:11-56a4* or as provided in *N.J.A.C. 12:56-7.1*, every employer shall pay to each of his or her employees, wages at a rate of not less than 1 1/2 times such employee's regular hourly wage.

SUBCHAPTER 7. EXEMPTIONS FROM OVERTIME

12:56-7.3 Exemption from overtime for an employee of a common carrier of passengers by motor bus

(a) Pursuant to *N.J.S.A. 34:11-56a4*, any individual employed by a common carrier of passengers by motor bus shall be exempt from the overtime requirements of *N.J.A.C. 12:56-6.1*.

(b) "Common carrier of passengers by motor bus," as used in this section, shall mean any employer that operates an "autobus," as that term is defined in *N.J.S.A. 48:4-1*, where the operation of the "autobus" has been authorized by the Chief Administrator of the New Jersey Motor Vehicle Commission through the issuance of a certificate of public convenience and necessity under *N.J.S.A. 48:4-3*.