



2 of 3 DOCUMENTS

NEW JERSEY REGISTER
Copyright © 2016 by the New Jersey Office of Administrative Law

VOLUME 48, ISSUE 21

ISSUE DATE: NOVEMBER 7, 2016

RULE PROPOSALS

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

48 N.J.R. 2219(a)

Proposed New Rule: N.J.A.C. 12:56-7.4

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

Exemption from Overtime for Employees Engaged to Labor on a Farm

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

Authority: *N.J.S.A. 34:11-56.43*.

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

Proposal Number: PRN 2016-175.

A **public hearing** on the proposed new rule will be held on the following date at the following location:

Tuesday, December 6, 2016
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
13th Floor Auditorium
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 January 6, 2017, to:

David Fish, Executive Director
Legal and Regulatory Services
New Jersey Department of Labor and Workforce Development
PO Box 110-13th Floor
Trenton, New Jersey 08625-0110

Fax to: (609) 292-8246
E-mail: David.fish@dol.nj.gov.

The agency proposal follows:

Summary

The Department of Labor and Workforce Development (Department) is proposing new N.J.A.C. 12:56-7.4, which would indicate that relative to the statutory exemption from overtime for employees engaged to labor on a farm, the phrase, "engaged to labor on a farm," shall mean employment in "agriculture," as that term is defined within 29 U.S.C. § 203(f). *N.J.S.A. 34:11-56a4* includes among a list of specialized exemptions from the overtime premium pay requirement, one for "employees engaged to labor on a farm." The phrase, "engaged to labor on a farm," is not defined within New Jersey law, nor is there an existing definition for the phrase within Department rules. In the absence of such a definition, a circumstance which has proven problematic for the Department in its enforcement of the statutory overtime requirement, it is appropriate to look to analogous Federal law and regulations for guidance; that is, in this particular instance, to the Federal Fair Labor Standards Act (FLSA) and the regulations promulgated in accordance therewith.

Under the FLSA, the Federal government exempts from its overtime premium pay requirement any "employee employed in agriculture." 29 U.S.C. § 213(b)12. The Federal government defines the term, "agriculture," to include:

[F]arming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

29 U.S.C. § 203(f)

It has been stated that to read the New Jersey exemption for employees engaged to labor on a farm more narrowly than the Federal government reads its corresponding exemption for those employed in "agriculture," would harm New Jersey farmers, in that it would place them at a substantial disadvantage competitively relative to farmers in other states. Those who assert this, acknowledge the general admonition of the courts in New Jersey that the Wage and Hour Law has a remedial purpose and, therefore, exemptions to *N.J.S.A. 34:11-56a4* should be construed narrowly. See *In the Matter of Raymour and Flanagan*, 405 N.J. Super. 367, 376 (App. Div. 2009); *Marx v. Friendly Ice Cream Corp.*, 380 N.J. Super. 302, 310 (App. Div. 2005); *Yellow Cab Co. v. State*, 126 N.J. Super. 81, 86 (App. Div. 1973), cert. denied, 64 NJ 498 (1974); *State v. Comfort Cab, Inc.*, 118 N.J. Super. 162, 175 (1972). However, those individuals argue that under the New Jersey Right to Farm Act (NJRFA), *N.J.S.A. 4:1C-1* et seq., all State departments are instructed to "encourage the maintenance of agricultural production and a positive agricultural business climate." *N.J.S.A. 4:1C-2*. It is explained further within the NJRFA that, "the retention of agricultural activities would serve the best interest of all citizens of New Jersey by insuring the numerous social, economic, and environmental benefits which accrue from one of the largest industries in the Garden State." *Ibid*. Those who would support the proposed definition of the phrase, "engaged to labor on a farm," maintain, as indicted above, that if the New Jersey [page=2220] exemption for employees who are engaged to labor on a farm is read more narrowly than the FLSA exemption for those employed in "agriculture," farmers in other states will have a competitive advantage over New Jersey farmers relative to cost and will undercut New Jersey farmers' market price. This, they maintain, would be disastrous for the agricultural business climate in New Jersey, which, in turn, would be inconsistent with the NJRFA and its laudable purpose, namely, to retain agricultural activities in New Jersey and, toward that end, limit regulation which would unnecessarily constrain essential farm practices.

Under the circumstances described above, the Department is proposing new N.J.A.C. 12:56-7.4, which would indicate that relative to the statutory exemption from overtime for employees engaged to labor on a farm, the phrase, "engaged to labor on a farm," shall mean employment in "agriculture," as that term is defined within 29 U.S.C. § 203(f).

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 proposed new rule would have a positive social impact in that it would eliminate any possible confusion regarding the Department's enforcement policy relative to the statutory exemption from the overtime premium pay requirement for employees who are engaged to labor on a farm. Specifically, with the Department's adoption of the definition for the term, "agriculture," set forth at 29 U.S.C. § 203(f), as the definition for the phrase, "engaged to labor on a farm," which appears within *N.J.S.A. 34:11-56a4*, the regulated community would be assured that where their practices relative to exemption from overtime for employees engaged to labor on a farm conform to appropriate Federal law and regulations for employment in "agriculture," those practices also comply with the appropriate State law and rules. This straightforward and simple approach would be of assistance not only to the regulated community, but also to the Department in its enforcement efforts.

Economic Impact

The proposed new rule would have a positive economic impact on employers in that having a better understanding of the Department's enforcement policy should help them avoid running afoul of the State overtime law and rules, thereby incurring fewer administrative penalties. The proposed new rule may have a negative economic impact on employees who would seek to recover overtime premium pay against employers under the New Jersey overtime law and rules in that a narrower reading of the phrase, "engaged to labor on a farm," may have resulted in the payment of a premium rate for overtime hours worked by certain employees; whereas, under the approach suggested in the proposed new rule--an approach which is identical to that taken by the Federal government relative to its exemption from the FLSA's overtime requirement for employment in "agriculture"--those same employees may not receive premium pay for overtime hours worked. Nevertheless, as indicated in the Summary above, the Department believes that ensuring consistency in this particular regard between New Jersey's law and rules and the Federal government's law and regulations, would be consistent with the overarching legislative purpose expressed in the NJRFA. Furthermore, the Department is unaware of any compelling reason to have a standard in New Jersey for overtime pay within the agricultural industry which differs from the corresponding overtime pay standard found within the FLSA.

Federal Standards Statement

The proposed new rule would not exceed standards or requirements imposed by Federal law. Specifically, the proposed new rule would essentially adopt by reference the Federal standard set forth at 29 U.S.C. § 203(f).

Jobs Impact

The proposed new rule would have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The impact of the proposed new rule on the agriculture industry is described in detail within the Summary, Social Impact, and Economic Impact statements above.

Regulatory Flexibility Analysis

The proposed new rule would impose no reporting, recordkeeping, or compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16 et seq.* Rather, the proposed new rule would simply facilitate a better understanding by employers and employees of the Wage and Hour Law. The clarity that would result from the proposed new rule would inure to the benefit of all concerned, including employers, large and small.

Housing Affordability Impact Analysis

The proposed new rule would have no impact on the affordability of housing in New Jersey and would not evoke a change in the average costs associated with housing because the proposed new rule pertains to overtime exemptions in agriculture and has nothing to do with housing.

Smart Growth Development Impact Analysis

The proposed new rule would have no impact on smart growth and would not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed new rule pertains to overtime exemptions in agriculture and has nothing to do with housing.

Full text of the proposed new rule follows:

12:56-7.4 Exemption from overtime for employees engaged to labor on a farm

(a) Pursuant to *N.J.S.A. 34:11-56a4*, any employee engaged to labor on a farm shall be exempt from the overtime requirements of *N.J.A.C. 12:56-6.1*.

(b) "Engaged to labor on a farm," as used in this section, shall mean employment in "agriculture," as that term is defined within *29 U.S.C. § 203(f)*.