

## [50 N.J.R. 2546\(a\)](#)

VOLUME 50, ISSUE 24, DECEMBER 17, 2018

### **RULE PROPOSALS**

#### **Reporter**

50 N.J.R. 2546(a)

***NJ - New Jersey Register > 2018 > DECEMBER > DECEMBER 17, 2018 > RULE PROPOSALS > LABOR AND WORKFORCE DEVELOPMENT -- DIVISION OF WAGE AND HOUR COMPLIANCE***

## **Interested Persons Statement**

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### INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of [N.J.S.A. 52:14B-3](#). An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at [N.J.A.C. 1:30-6.3](#). The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## **Agency**

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LABOR AND WORKFORCE DEVELOPMENT > DIVISION OF WAGE AND HOUR COMPLIANCE

## **Administrative Code Citation**

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Proposed Readoption: [N.J.A.C. 12:67](#)

## **Text**

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### **Prohibited Discrimination Against Unemployed Individuals**

Authorized By: Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Authority: [N.J.S.A. 34:1-20](#) and [34:1A-3\(e\)](#).

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

Proposal Number: PRN 2018-115.

A **public hearing** on the notice of rules proposed for readoption will be held on the following date at the following location:

January 9, 2019  
10:00 A.M. to 12:00 Noon  
NJ Department of Labor and Workforce Development  
John Fitch Plaza  
2nd Floor 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 February 15, 2019, to:

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

E-mail: [david.fish@dol.nj.gov](mailto:david.fish@dol.nj.gov)

The agency proposal follows:

### Summary

Pursuant to [N.J.S.A. 52:14B-5.1.c](#), [N.J.A.C. 12:67](#), Prohibited Discrimination Against Unemployed Individuals, was scheduled to expire on November 7, 2018. As the Department of Labor and Workforce Development (Department) submitted this notice of proposal to the Office Of Administrative Law prior to that date, the expiration date was extended 180 days to May 6, 2019, pursuant to [N.J.S.A. 52:14B-5.1.c\(2\)](#). The [page=2547] Department has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated. Accordingly, the Department proposes that [N.J.A.C. 12:67](#) be readopted.

A summary of the sections proposed for readoption follows:

[N.J.A.C. 12:67-1.1](#) sets forth the purpose and scope of the chapter.

[N.J.A.C. 12:67-1.2](#) includes definitions of words and terms used throughout the chapter.

[N.J.A.C. 12:67-1.3](#) addresses what constitutes a violation of P.L. 2011, c. 40 (the Act).

[N.J.A.C. 12:67-1.4](#) concerns the assessment of administrative penalties when there has been a violation of the Act.

[N.J.A.C. 12:67-1.5](#) addresses the appeal process available to an employer against whom an administrative penalty has been levied for violation of the Act.

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

### **Social Impact**

The rules proposed for readoption would have a positive social impact in that they would continue to provide a regulatory framework for the assessment of penalties and processing of appeals where a violation of the Act has occurred, thereby enabling the Department to effectively enforce the Act as is its statutory charge.

### **Economic Impact**

The rules proposed for readoption would have no economic impact beyond that which would result from the possible levying of penalties by the Department for violation of the Act's prohibition against knowingly or purposefully publishing in print or on the internet, an advertisement for any job vacancy in the State that contains a provision indicating that the employer will not consider the applications of unemployed individuals.

### **Federal Standards Statement**

The rules proposed for readoption do not exceed standards or requirements imposed by Federal law as there are currently no Federal standards or requirements applicable to the subject matter of this rulemaking. As a result, a Federal standards analysis is not required.

### **Jobs Impact**

The Department does not anticipate that the rules proposed for readoption would result in either the generation or loss of jobs.

### **Agriculture Industry Impact**

The rules proposed for readoption would have no impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

The rules proposed for readoption would continue to prohibit all employers, including those that are small businesses, as that term is defined within the Regulatory Flexibility Act, [N.J.S.A. 52:14B-16](#) et seq., from knowingly or purposefully publishing in print or on the internet, an advertisement for any job vacancy in the State that contains a provision indicating that the employer will not consider the applications of unemployed individuals. This prohibition is expressly dictated by the Act. No distinction relative to the prohibition is made within the Act between large and small businesses. The Department has no discretion to deviate from the Act. The rules proposed for readoption would, however, continue to include the size of the employer among the factors to be considered when determining what constitutes an appropriate administrative penalty for a particular violation. This is within the Department's discretion under the Act.

### **Housing Affordability Impact Analysis**

The rules proposed for readoption would not evoke a change in the average costs associated with housing or on the affordability of housing. The basis for this finding is that the rules proposed for readoption pertain to discrimination against unemployed individuals in the advertisement by employers for job vacancies within the State. The rules proposed for readoption do not pertain to housing.

### **Smart Growth Development Impact Analysis**

The rules proposed for readoption would not evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for readoption pertain to discrimination against unemployed individuals in the advertisement by

employers for job vacancies within the State. The rules proposed for readoption do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department has evaluated the rules proposed for readoption and determined that they will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

## **Regulations**

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**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at [N.J.A.C. 12:67](#).

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