



NEW JERSEY REGISTER
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VOLUME 45, ISSUE 1

ISSUE DATE: JANUARY 7, 2013

RULE PROPOSALS

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

45 N.J.R. 17(a)

Proposed Amendment: N.J.A.C. 12:2-1.3 and 12:2 Appendix

Proposed New Rules: N.J.A.C. 12:2-2 and 12:2 Appendix B

Click here to view Interested Persons Statement

Notification Posted by Employer Pursuant to P.L. 2012, c. 57, Relating to the Right to Be Free of Gender Inequity or Bias in Pay, Compensation, Benefits, or Terms, Conditions, or Privileges of Employment

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

Authority: *N.J.S.A. 34:1-20* and *34:1A-3(e)*; and P.L. 2009, c. 194, sec. 4.a (*N.J.S.A. 34:1A-1.14*), and P.L. 2012, c. 57, Sec. 1.a (*N.J.S.A. 34:11-56.12*).

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

Proposal Number: PRN 2013-007.

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

Wednesday, January 30, 2013
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 March 8, 2013 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services
P.O. Box 110, 13th Floor
Trenton, New Jersey 08625-0110
Fax: (609) 292-8246

The agency proposal follows:

Summary

The Department is proposing new rules at N.J.A.C. 12:2-2 and 12:2 Appendix B, in order to comply with P.L. 2012, c. 57 (*N.J.S.A. 34:11-56.12*), which requires that notification be in a form by the Commissioner that is "issued by regulation" and is to be used by employers to satisfy the requirements set forth in section 1 of P.L. 2012, c. 57. Specifically, section 1 requires that every employer in New Jersey, with 50 or more employees, shall conspicuously post notification, in a place or places accessible to all workers in each of the employer's workplaces, detailing the right to be free of gender inequity or bias in pay, compensation, benefits, or other terms and conditions of employment under the "Law Against Discrimination," P.L. 1945, c. 169 (*N.J.S.A. 10:5-1 et seq.*), P.L. 1952, c. 9 (*N.J.S.A. 34:11-56.1 et seq.*), Title VII of the Civil Rights Act of 1964, Pub. L. 88-352 (*42 U.S.C. §§ 2000e et seq.*), and the Equal Pay Act of 1963, Pub. L. 88-38 (*29 U.S.C. § 206(d)*), which prohibit wage or compensation discrimination based on gender. This section further requires that every such employer shall provide each worker of the employer with a written copy of the notification: not later than 30 days after the effective date of N.J.A.C. 12:2-2; at the time of the worker's hiring, if the worker is hired after the issuance; annually, on or before December 31 of each year; and at any time, upon the first request of the worker.

The Department is also proposing amendments to *N.J.A.C. 12:2-1.3*, which would replace existing references throughout the section to "the chapter Appendix" with references to "*N.J.A.C. 12:2 Appendix A*." The [page=18] amendments are necessitated by the addition through this rulemaking of *N.J.A.C. 12:2 Appendix B*.

Finally, the Department is proposing to amend the heading of the existing chapter Appendix, so as to reflect that it will be *N.J.A.C. 12:2 Appendix A*.

Proposed new N.J.A.C. 12:2-2.1 would set forth the purpose and scope of the subchapter.

Proposed new N.J.A.C. 12:2-2.2 would contain definitions of words and terms used throughout the subchapter.

Proposed new N.J.A.C. 12:2-2.3 would contain the posting and employee distribution requirements of the law.

Proposed new N.J.A.C. 12:2-2.4 would contain the requirement that the notification provided to each worker under subsection 1b. of P.L. 2012, c. 57 shall be accompanied by an acknowledgment that the worker has received the notification and has read and understands its terms.

Proposed new *N.J.A.C. 12:2 Appendix B* would contain the form of notification to be used by employers in order to comply with section 1 of P.L. 2012, c. 57.

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 amendments and new rules would have a positive social impact in that they would provide employers a ready reference within the New Jersey Administrative Code as to the form of the statutorily required notification.

Economic Impact

The proposed amendments and new rules would have no economic impact, beyond the impact of the posting and distribution requirement itself, which is contained within P.L. 2012, c. 57, and from which the Department has no discretion to deviate.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments and new rules are not subject to any Federal standards or requirements. Specifically, the subject matter of the proposed new rules is governed by P.L. 2012, c. 57.

Jobs Impact

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

Agriculture Industry Impact

The proposed amendments and new rules would have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments and new rules would impose no reporting or recordkeeping requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. With regard to compliance requirements, the proposed amendments and new rules would require the posting and distribution of the notification found in *N.J.A.C. 12:2* Appendix B, as is required by P.L. 2012, c. 57, which requires compliance and makes no distinction between small and large employers.

Housing Affordability Impact Analysis

The proposed amendments and new rules would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed amendments and new rules pertain to the posting and distribution by employers of a notification pursuant to P.L. 2012, c. 57, and have nothing to do with housing.

Smart Growth Development Impact Analysis

The proposed amendments and new rules would not evoke a change in the 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 proposed amendments and new rules pertain to the posting and distribution by employers of a notification pursuant to P.L. 2012, c. 57, and have nothing to do with housing production.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. NOTIFICATION POSTED BY EMPLOYER PURSUANT TO P.L. 2009, [C.] c. 194, RELATING TO EMPLOYER OBLIGATION TO MAINTAIN AND REPORT RECORDS REGARDING WAGES, BENEFITS, TAXES, AND OTHER CONTRIBUTIONS AND ASSESSMENTS UNDER STATE WAGE, BENEFIT, AND TAX LAWS

12:2-1.3 Posting and distribution requirements

- (a) Each employer that is required to maintain and report records regarding wages, benefits, taxes, and other contributions and assessments pursuant to the State wage, benefit, and tax laws shall conspicuously post in a place or places accessible to all employees in each of the employer's workplaces the notification found in [the chapter] *N.J.A.C. 12:2* Appendix A.
- (b) Each employer that is required to maintain and report records regarding wages, benefits, taxes, and other contributions and assessments pursuant to the State wage, benefit, and tax laws shall not later than December 7, 2011, or, if the employee is hired after November 7, 2011, at the time of the employee's hiring, provide each employee a written copy of the notification found in [the chapter] *N.J.A.C. 12:2* Appendix A.
- (c) In the event that an employer has an internet site or intranet site for exclusive use by its employees and to which all employees have access, posting of the notification found in [the chapter] *N.J.A.C. 12:2* Appendix A on the employer's internet site or intranet site shall satisfy the conspicuous posting requirement set forth in (a) above.
- (d) Providing to an employee via email the notification found in [the chapter] *N.J.A.C. 12:2* Appendix A shall satisfy the requirement in (b) above, that the employer provide each employee a written copy of the notification.

SUBCHAPTER 2. NOTIFICATION POSTED BY EMPLOYER PURSUANT TO P.L. 2012, c. 57, RELATING TO THE RIGHT TO BE FREE OF GENDER INEQUITY OR BIAS IN PAY, COMPENSATION, BENEFITS, OR TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT

12:2-2.1 Purpose and scope

(a) The purpose of this subchapter is to issue by rule, as required by P.L. 2012, c. 57, the form of notification, which shall be used by employers to comply with the requirement, set forth within P.L. 2012, c. 57, that every employer in New Jersey, with 50 or more employees, shall conspicuously post notification, in a place or places accessible to all employees in each of the employer's workplaces, detailing the right to be free of gender inequity or bias in pay, compensation, benefits, or other terms and conditions of employment under the "Law Against Discrimination," P.L. 1945, c. 169 (*N.J.S.A. 10:5-1 et seq.*), P.L. 1952, c. 9 (*N.J.S.A. 34:11-56.1 et seq.*), Title VII of the Civil Rights Act of 1964, Pub. L. 88-352 (*42 U.S.C. §§ 2000e et seq.*), and the Equal Pay Act of 1963, Pub. L. 88-38 (*29 U.S.C. § 206(d)*), which prohibit wage or compensation discrimination based on gender. In addition, the purpose of this subchapter is to require that every such employer shall provide each employee of the employer with a written copy of the notification: not later than (30 days after the effective date of this subchapter), or if the employee is hired after (the effective date of this subchapter), at the time of the employee's hiring; annually, on or before December 31 of each year; and at any time, upon the first request of the employee.

(b) The provisions of this subchapter shall be applicable to every covered employer.

[page=19] **12:2-2.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Covered employer" means an employer in New Jersey, which has a total of 50 or more employees, whether those employees work inside or outside of New Jersey.

"Department" means the Department of Labor and Workforce Development.

12:2-2.3 Posting and distribution requirements

(a) Each covered employer shall conspicuously post in a place or places accessible to all employees in each of the employer's workplaces the notification found in *N.J.A.C. 12:2 Appendix B*.

(b) Each covered employer shall provide each employee a written copy of the notification found in *N.J.A.C. 12:2 Appendix B*:

1. Not later than (30 days after the effective date of this subchapter), or at the time of the employee's hiring, if the employee is hired after (the effective date of this subchapter);

2. Annually, on or before December 31 of each year; and

3. Upon the first request of an employee.

(c) In the event that an employer has an internet site or intranet site for exclusive use by its employees and to which all employees have access, posting of the notification found in *N.J.A.C. 12:2 Appendix B* on the employer's internet site or intranet site shall satisfy the conspicuous posting requirement set forth in (a) above.

(d) An employer shall make the written copy of the notification available to each worker under (b) and (c) above using one of the following methods:

1. By e-mail delivery;

2. Via printed material, including, but not limited to, a pay check insert; brochure or similar informational packet provided to new hires; an attachment to an employee manual or policy book; or flyer distributed at an employee meeting; or

3. Through an internet or intranet website, if the site is for the exclusive use of all employees, can be accessed by all employees, and the employer provides notice to the employees of its posting.

12:2-2.4 Acknowledgment of receipt

(a) The notification provided by the employer under N.J.A.C. 12:2-2.3(b) and (c) shall be accompanied by an acknowledgment that the employee has received the notification and has read and understands its terms.

(b) The acknowledgment in (a) above shall be signed by the employee, in writing or by means of electronic verification, and returned to the employer within 30 days of its receipt.

APPENDIX A

(No change.)

(Agency Note: The text of proposed new *N.J.A.C. 12:2* Appendix B follows without boldface symbolizing proposed new text; those portions of the appendix appearing in boldface are proposed to be so permanently.)

APPENDIX B

Right to be Free of Gender Inequity or Bias in Pay, Compensation, Benefits, or Other Terms and Conditions of Employment

New Jersey and federal laws prohibit employers from discriminating against an individual with respect to his/her pay, compensation, benefits, or terms, conditions or privileges of employment because of the individual's sex.

FEDERAL LAW

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on, among other things, an individual's sex. Title VII claims must be filed with the United States Equal Employment Opportunity Commission (EEOC) before they can be brought in court. Remedies under Title VII may include an order restraining unlawful discrimination, back pay, and compensatory and punitive damages.

The Equal Pay Act of 1963 (EPA) prohibits discrimination in compensation based on sex. EPA claims can be filed either with the EEOC or directly with the court. Remedies under the EPA may include the amount of the salary or wages due from the employer, plus an additional equal amount as liquidated damages.

Please be mindful that in order for a disparity in compensation based on sex to be actionable under the EPA, it must be for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

There are strict time limits for filing charges of employment discrimination. For further information, contact the EEOC at 800-669-4000 or at www.eeoc.gov.

NEW JERSEY LAW

The New Jersey Law Against Discrimination (LAD) prohibits employment discrimination based on, among other things, an individual's sex. LAD claims can be filed with the New Jersey Division on Civil Rights (NJDCR) or directly in court. Remedies under the LAD may include an order restraining unlawful discrimination, back pay, and compensatory and punitive damages.

Another State law, *N.J.S.A. 34:11-56.1* et seq., prohibits discrimination in the rate or method of payment of wages to an employee because of his or her sex. Claims under this wage discrimination law may be filed with the New Jersey Department of Labor and Workforce Development (NJDLWD) or directly in court. Remedies under this law may include the full amount of the salary or wages owed, plus an additional equal amount as liquidated damages.

Please be mindful that under the State wage discrimination law a differential in pay between employees based on a reasonable factor or factors other than sex shall not constitute discrimination.

There are strict time limits for filing charges of employment discrimination. For more information regarding LAD claims, contact the NJDCR at 609-292-4605 or at www.njcivilrights.gov. For information concerning *N.J.S.A. 34:11-56.1* et seq., contact the Division of Wage and Hour Compliance (DWHC), within the NJDLWD at 609-292-2305 or at <http://lwd.state.nj.us>.