

FILED: JULY 15, 2025

LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WAGE AND HOUR COMPLIANCE
Domestic Workers

Proposed Amendment: N.J.A.C. 12:56-3.6

Proposed New Rules: N.J.A.C. 12:73

Authorized By: _____

Robert Asaro-Angelo, Commissioner

Department of Labor and Workforce Development

Authority: N.J.S.A. 34:1-20; 34:1A-3(e); and 34:11-78.

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

Proposal Number: PRN 2025 - _____

Submit written comments by _____ to:

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The agency proposal follows:

Summary

The Department is proposing an amendment to N.J.A.C. 12:56-3.6 and new rules at N.J.A.C. 12:73, to implement Sections 1, 2, and 8, and Sections 13 through 21, of P.L. 2023, c. 262, commonly referred to as the Domestic Workers' Bill of Rights. These are sections of the law that are within the purview of the Department's Division of Wage and Hour Compliance. Other sections of the Domestic Workers' Bill of Rights amend N.J.S.A. 10:5-1 et seq., the Law Against Discrimination, N.J.S.A. 34:6A-1 et seq., the Worker Health and Safety Act, N.J.S.A. 34:15-1 et seq., the Workers' Compensation Act, and N.J.S.A. 43:21-1 et seq., the Unemployment Compensation Law. None of those sections of the Domestic Workers' Bill of Rights would be implemented by the proposed amendment to N.J.A.C. 12:56-3.6 or the proposed new rules at N.J.A.C. 12:73, which are the subject of this rulemaking. Throughout this Notice of Proposal, P.L. 2023, c. 262, sections 1, 2, and 8, and sections 13 through 21 will be referred to as "the Act."

In Section 1 of P.L. 2023, c. 262, the legislature makes findings and declarations. In Section 2 of P.L. 2023, c. 262, the legislature defines words and terms that are used throughout the entirety of P.L. 2023, c. 262, including the sections that are referred to in this rulemaking as "the Act." Section 8 of P.L. 2023, c. 262, amends N.J.S.A. 34:11-56a4 to eliminate the exemption from the State's minimum wage requirement for part-time employees primarily engaged in the care and tending of children in the home of the employer. To implement this section of the Act, the Department is proposing an amendment to N.J.A.C. 12:56-3.6, which would delete paragraph (a)4. This paragraph contains the exemption from the minimum wage requirement for part-time employees

primarily engaged in the care and tending of children in the home of the employer, which no longer appears in N.J.S.A. 34:11-56a4. The remaining sections of the Act – Sections 1 and 2, and Sections 13 through 21, apply to domestic workers and hiring entities, including both employer hiring entities and non-employer hiring entities, and impose the following requirements and restrictions:

(1) Written Contract. The Act at Section 13 (NJSA 34:11-71) provides that no hiring entity shall employ or engage a domestic worker, except for casual work or work of less than five hours per month, unless the engagement is governed by a written contract that contains or addresses the following: “a specific list of job duties; hourly wage and overtime wage; weekly schedule including number of hours per week; the manner and frequency of payment; breaks for rest and meals; paid or unpaid leave including sick time; paid holidays; any other benefits provided; modes of transportation required and whether provided; value of housing if provided; sleeping period and personal time for live-in workers; the term of the contract; and any other terms and conditions as agreed upon by the domestic worker and employer or as mandated pursuant to this Act.” The Act also requires that the written contract “shall be signed and dated by all parties after ample opportunity to review;” lists what should not be contained within the written contract, like mandatory pre-dispute arbitration agreements and non-disclosure, non-competition or non-disparagement agreements; requires that the contract be in English and such other language as may be preferred by the domestic worker; states that the Department will make available, in multiple languages, model contracts that comply with the Act; and requires that a referral or employment agency must provide domestic workers and hiring entities with information concerning

the Act's written contract requirement "at the time a hiring entity is connected with a worker."

(2) **Meal and Rest Periods.** The Act at Section 14 (NJSA 34:11-72) provides that after more than five consecutive hours worked by a domestic worker, the domestic worker's employer(s) must provide the domestic worker with a 30-minute meal period; and that for each four consecutive hours worked by the domestic worker, the employer(s) of the domestic worker must provide the domestic worker with a rest period of not less than ten minutes. Section 14 also addresses under which circumstances the meal and rest periods must be paid, and when the employer(s) are permitted to require a domestic worker to take an "on-duty" meal or rest period. The Act at Section 15 (N.J.S.A. 34:11-73) provides that a live-in domestic worker cannot be required to work more than six consecutive days for the same employer without a 24-hour period of rest.

(3) **Notification of Termination of Employment.** The Act at Section 16 (NJSA 34:11-74) provides that the employer of a domestic worker must provide "a minimum two-week notification period" before termination of employment; and that for a live-in domestic worker, the employer must provide "a minimum four-week notification period" before termination of employment. The Act also provides that the employer may terminate the employment of a domestic worker "without complying with the full notification period based on a good-faith belief and without reckless disregard or willful ignorance of the truth that the domestic worker has engaged in significant misconduct." The Act defines the term "significant misconduct" to mean that the domestic worker abused, neglected, or caused any other harmful conduct against the employer, members of the employer's family, or individuals residing in the employer's household."

Section 16 lists two other circumstances where the notification requirement does not apply: (1) where “a domestic worker completes placement in a particular position and is not immediately placed or scheduled for another position by an employer if the employer is a temporary help service firm, employment agency, or other staffing or placement agency, health care service firm, home health agency, or hospice provider, but the domestic worker remains on the employer’s payroll for future placement opportunities,” and (2) where “a domestic worker is employed by an employer that is an individual and not a temporary help service firm, employment agency, or other staffing or placement agency, health care service firm, home health agency, or hospice provider, whether or not the employer is the person receiving care from the domestic worker, and the domestic worker completes or fulfills all duties of the position, and there is no longer a practicable need for the position, including, but not limited to, if the domestic worker’s employer is an individual who has employed the domestic worker to care for a person who is terminally ill and the terminally ill person passes away.” Finally, regarding the notification requirement, Section 16 states that “failure to provide notification as required under this section shall entitle the domestic worker to severance pay in the amount of the worker’s regular hourly rate multiplied by the regular number of hours worked over the period of time during which the required notification was not provided.”

(4) **Worker Privacy.** The Act at Section 17 (NJSA 34:11-75) provides that a hiring entity is prohibited from any of the following: keeping or holding the original copies of any personal documents of a domestic worker; monitoring or recording, through any means, the activities of a domestic worker using any bathroom or similar facility, in the living quarters of the domestic worker, or while the domestic worker is engaged in any

activities associated with dressing or changing clothes; and monitoring, recording or interfering with the private communications of a domestic worker.

(5) **Recordkeeping.** The Act at section 18 (NJSA 34:11-76) provides that for each domestic worker employed by a hiring entity, the employer must “maintain records documenting hours worked, pay rate, meals and rest breaks, leave time earned and used, if applicable, and the existence of a written agreement.” The Act adds that “[i]f a hiring entity does not maintain the required records or does not allow the department reasonable access to the records, an adverse inference may be drawn with respect to facts alleged regarding the issues about which records were not kept.”

Section 19 of the Act (NJSA 34:11-77) prohibits retaliation by a hiring entity against a domestic worker for exercising rights guaranteed under the Act.

Section 20 of the Act (NJSA 34:11-78) states that the Department “shall promulgate...regulations to effectuate the purposes of [the Act].”

Section 21 of the Act (NJSA 34:11-79) empowers the Department when it finds that there has been a violation of the Act to assess administrative penalties against hiring entities, order certain remedies for domestic workers, and, finally, order the payment of “presumed damages.”

To implement the Act, the Department is proposing new rules at N.J.A.C. 12:73, which would include the following subchapters:

Proposed new N.J.A.C. 12:73-1 would contain general provisions, including the purpose of the chapter (N.J.A.C. 12:73-1.1) and sections that address violations and administrative penalties (N.J.A.C. 12:73.1.3), remedies (including “presumed damages”) (N.J.A.C. 12:73-1.5), hearings (N.J.A.C. 12:73-1.5), the Act’s prohibition against

retaliation (N.J.A.C. 12:73-1.2), the process for filing a complaint alleging a violation of either the Act or this chapter with the Division of Wage and Hour Compliance within the Department of Labor and Workforce Development (N.J.A.C. 12:73-1.6), and the requirement that a hiring entity must provide domestic workers with a notification of the rights of domestic workers under the Act (N.J.A.C. 12:73-1.7).

With specific regard to those sections of proposed new Subchapter 1 that would address the imposition of administrative penalties (N.J.A.C. 12:73-1.3) and the ordering of remedies and damages (N.J.A.C. 12:73-1.4), the Act, at N.J.S.A. 34:11-79(f), empowers the Department to “impose penalties” for violations of the Act, but the Act does not itself set forth the amount of those penalties. The Act, at N.J.S.A. 34:11-79(f), empowers the Department to order “remedies,” which “may include reinstatement and full restitution to the domestic worker for lost wages and benefits, including presumed damages to be awarded to a domestic worker for the hiring entity’s or employer’s violation of [the Act],” adding that, “the Department shall determine by regulation the amount of presumed damages.” The Act, at N.J.S.A. 34:11-72(e), expressly provides that “[i]n the case of a violation of this section [regarding rest and meal periods], the domestic work employer involved shall be liable to the domestic worker for an amount equal to one hour of pay at the domestic worker’s regular rate of compensation, but not more than two hours of such pay, for each workday that the meal or rest period was not provided.” The Act, at N.J.S.A. 34:11-74(c), expressly provides that “[f]ailure to provide notification as required in this section shall entitle the domestic worker to severance pay in the amount of the worker’s regular hourly rate multiplied by the regular number of hours worked over the period of time during which the required notification was not

provided.” In order to implement these provisions of the Act regarding “penalties” (paid to the Department) and “remedies” (paid to the affected domestic worker) for violations of the Act, generally; a remedy to be paid to the domestic worker of between one hour of pay and two hours of pay for each workday that the required meal or rest period was not provided, and a remedy (“severance pay”) to be paid to the domestic worker equal to one day of wages at the domestic worker’s regular hourly rate of pay for each day that a required notification of termination was deficient, the Department is proposing the following new sections, which are mentioned in the preceding paragraph of this Summary, but are described in more detail below:

(1) New N.J.A.C. 12:73-1.3, which would establish penalty amounts for violations of the Act that are identical to the penalties for violations of the New Jersey Wage Payment Law and New Jersey Wage and Hour Law set forth at N.J.A.C. 12:55-1.6 and 12:56-1.3, respectively. New N.J.A.C. 12:73-1.3 would also establish factors to be considered by the Department in assessing the appropriate amount of a penalty, and would state that no administrative penalty shall be levied pursuant to the section unless the Commissioner provides the alleged violator with written notification of the violation and the amount of the penalty and an opportunity to request a formal hearing. The latter provisions also appear in the Departmental rules regarding administrative penalties at N.J.A.C. 12:55-1.6 and 12:56-1.3.

(2) New N.J.A.C. 12:73-1.4, which would address remedies for domestic workers impacted by violations of the Act, including: (a) authorizing the Commissioner to order reinstatement and back pay, where appropriate, (b)

establishing that for a first violation of the requirements of N.J.A.C. 12:74-4.1 through 4.5 (Rest and Meal Periods), the employer hiring entity shall be ordered to pay the domestic worker an amount equal to one hour of pay at the domestic worker's regular rate of pay, and for the second and each subsequent violation of the requirements of N.J.A.C. 12:74-4.1 through 4.5 (Rest and Meal Periods), the employer hiring entity shall be ordered to pay the domestic worker an amount equal to two hours of pay at the domestic worker's regular rate of pay; (c) authorizing the Commissioner, when it is determined that an employer hiring entity has failed to provide the notice of termination of employment required under N.J.A.C. 12:73-5.1, to order payment by the employer hiring entity to the domestic worker of an amount equal to one day of wages at the domestic worker's regular hourly rate of pay for each day that the notification was deficient; and (d) establishing that when the Commissioner finds that a hiring entity has violated a provision of the Act or of the chapter for which none of the remedies listed in proposed new N.J.A.C. 12:73-1.4(a) through (c) is an appropriate remedy, the Commissioner is authorized to order payment by the hiring entity to the domestic worker of presumed damages in the same amount of the penalty that the violator has been ordered to pay to the Department under proposed N.J.A.C. 12:73-1.3.

Proposed new N.J.A.C. 12:73-2 would define words and terms that are used throughout the chapter, as those definitions appear in the Act. The Department also proposes definitions for the terms, "benefits", "employ", "employee", and "employer",

which would be consistent with definitions for those terms that appear within related existing Departmental rules.

Proposed new N.J.A.C. 12:73-3 would address the written contract requirements of the Act, delineating which of those requirements apply to employer hiring entities and which apply to non-employer hiring entities; and describing the statutory exemption from the written contract requirements for casual work or work of less than five hours per month. Relative to the written contract requirements of the Act that apply to employer hiring entities, proposed new N.J.A.C. 12:73-3.1 would state that prior to the commencement of employment, each employer of a domestic worker must draft and offer to the domestic worker a written contract of employment, which contains, at a minimum, twelve specific elements. Proposed new N.J.A.C. 12:73-3.1 would also require each employer of a domestic worker, prior to the commencement of employment, to afford the domestic worker an opportunity to negotiate the terms of the written employment contract; and, specifically, would require that each employer of a domestic worker provide the domestic worker with no less than three business days to review the draft written employment contract. Proposed new N.J.A.C. 12:73-3.1 would prohibit an employer from employing a domestic worker without a written contract of employment in place; it would list provisions which an employer is prohibited under the Act from including in such a contract (e.g., pre-dispute arbitration agreements, non-disclosure agreements, non-competition agreements and non-disparagement agreements); it would state that the written employment contract shall not be construed to waive the protections of domestic workers under any law; it would state that the written employment contract must be in English and such other language as may be

preferred by the domestic worker; it would state that where there are joint employers of a domestic worker, there shall be a single written employment contract that is signed by each joint employer and by the domestic worker; it would contain the requirement from the Act that the Department make available on its website for use by employers of domestic workers a model contract or model contracts that would comply with the requirements of the Act; and, finally, it would state (as does the Act) that a material breach by an employer hiring entity of a contract with a domestic worker shall constitute a violation of the Act, without regard to whether the breach is of a provision required by the Act.

Regarding the written contract requirements of the Act that apply to non-employer hiring entities (e.g., bona fide referral agencies and employment agencies), proposed new N.J.A.C. 12:73-3.2 would require that on the date a referral agency or employment agency enters into an agreement with a prospective employer or prospective joint employers to employ a domestic worker, the referral agency or employment agency shall provide both the domestic worker and the prospective employer(s) with a copy of Subchapter 3 of N.J.A.C. 12:73 and provide the prospective employer(s) with any model contracts that have been made available on the Department's website. Proposed new N.J.A.C. 12:73-3.3 would restate the statutory exemption at N.J.S.A. 34:11-71(a) from coverage under the Act's written contract requirements when the domestic worker is performing casual work or work of less than five hours per month.

Proposed new N.J.A.C. 12:73-4 would address the Act's requirements regarding meal and rest periods.

Proposed new N.J.A.C. 12:73-5 would address the requirements that the employer of a domestic worker must notify the domestic worker of a termination of employment no less than two weeks (14 calendar days) prior to the termination of employment, and the employer of a live-in domestic worker must notify the domestic worker of a termination of employment no less than four weeks (28 calendar days) prior to the termination of employment.

Proposed new N.J.A.C. 12:73-6 would list the Act's worker privacy protections, including the prohibition against keeping or holding original copies of any personal documents of a domestic worker; monitoring or recording the activities of a domestic worker using any bathroom or similar facility, in the living quarters of a domestic worker or while the domestic worker is engaged in any activities associated with dressing or changing clothes; and monitoring, recording or interfering with the private communications of a domestic worker.

Proposed new N.J.A.C. 12:73-7 would address the Act's recordkeeping requirements, expressly requiring that for each domestic worker employed by a hiring entity, the employer hiring entity must maintain the following records for a period of no less than two years: hours worked by the domestic worker, the rate(s) of pay of the domestic worker, meal and rest periods provided to the domestic worker, leave time earned and used by the domestic worker (if applicable), and the written agreement between the domestic worker and the employer hiring entity.

Proposed new N.J.A.C. 12:73-8 would address the issue of joint employers, defining what constitutes joint employment and indicating that a joint employer of a

domestic worker is subject to each of the requirements of the chapter that apply to an employer of a domestic worker.

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

Social Impact

The vast majority of the proposed amendment and new rules either mirror the Act or are necessitated by the Act. Therefore, whatever positive or negative social impact might be felt would derive in the first instance from the Act and not the proposed amendment and new rules. As to the remainder of the amendment and new rules, it is the Department's belief that they would have a positive social impact, in that they would minimize any possible confusion as to who is covered by the Act, what activities are prohibited and what sanctions may be imposed and remedies ordered under the Act. The proposed amendment and new rules would also provide detailed guidance to the regulated community as to how to comply with the Act.

Furthermore, the proposed new rules would have a positive social impact in that they would establish a process for the assessment of penalties and the ordering of remedies, and the hearing of appeals, thereby enabling the Department to effectively enforce the law. Finally, the proposed new rules would have an overall positive social impact in that they would provide a regulatory framework for the Department's administration of an Act that has as its purpose the protection of a class of workers; specifically, domestic workers. In that the Act's provisions will provide domestic workers

and their families with a greater degree of economic security and peace-of-mind, the proposed new rules would have the same positive social impact.

Economic Impact

As indicated in the Social Impact statement above, the vast majority of the proposed amendment and new rules either mirror the Act or are necessitated by the Act. Therefore, whatever positive or negative economic impact might be felt, including by domestic workers and hiring entities, would derive in the first instance from the Act, not the proposed amendment and new rules. That portion of the new rules which addresses the levying of penalties by the Department and the ordering by the Department of remedies against those who violate the Act could, of course, have a negative economic impact upon those hiring entities who run afoul of the Act. As to the remainder of the amendment and new rules, it is the Department's belief that they would have a positive economic impact in that they would minimize any possible confusion as to who is covered by the Act, what conduct is prohibited under the Act, and how hiring entities may comply with the Act, among other important issues. It is the Department's hope that minimizing confusion as to these issues will avoid costs for those impacted by the Act of unnecessary litigation, which might otherwise result.

Federal Standards Statement

The proposed new rules do not exceed standards or requirements imposed by Federal law. That is, there are currently no Federal standards or requirements relating to a domestic worker's written employment contract, meal or rest periods for domestic workers, notification of the termination of a domestic worker's employment, or the various domestic worker privacy concerns that are addressed in the Act (and repeated

verbatim within the proposed new rules). Because there are currently no such Federal standards or requirements, no Federal standards analysis is required relative to the proposed new rules.

Regarding the single proposed amendment to N.J.A.C. 12:56-3.6, which would delete the exemption from the minimum wage requirement for part-time employees primarily engaged in the care and tending of children in the home of the employer, as explained in the Summary above, this amendment is necessary to ensure consistency with N.J.S.A. 34:11-56a4, as amended by P.L. 2023, c. 262. Under the Federal Fair Labor Standards Act (FLSA), 29 U.S.C. 201 et seq., there is an exemption from the ***Federal minimum wage requirement*** for “any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves.” 29 U.S.C. 213(a)(15). With the amendment to N.J.S.A. 34:11-56a4 resulting from P.L. 2023, c. 262, and the corresponding proposed amendment to N.J.A.C. 12:56-3.6, there would no longer be an exemption from the ***State’s minimum wage requirement*** for “part-time employees primarily engaged in the care and tending of children in the home of the employer.” To the extent that there is overlap between those “employed on a casual basis in domestic service employment to provide babysitting services” and “part-time employees primarily engaged in the care and tending of children in the home of the employer,” the proposed amendment to N.J.A.C. 12:56-3.6 would result in a set of workers being covered by the ***State’s minimum wage requirement*** who are currently exempt from the ***Federal minimum wage requirement*** under the FLSA. However, as

mentioned earlier, the proposed amendment to N.J.A.C. 12:56-3.6 is taken verbatim from P.L. 2023, c. 262, which amends N.J.S.A. 34:11-56a4, the State's minimum wage law. Because the Department has no discretion to deviate from this express statutory mandate, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate that the proposed amendment and new rules would have any impact on the generation or loss of jobs.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendment and new rules would have any impact on the agriculture industry in that the impact of the proposed new rules should be limited to domestic workers.

Regulatory Flexibility Analysis

It is not possible at this time to estimate how many businesses with fewer than 100 full-time employees may be impacted by the Act and these rules. Nevertheless, to the extent that any "hiring entity" as that term is defined in the Act, also meets the definition of "small employer" within the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. (resident in this State, independently owned and operated, not dominant in its field, and employs fewer than 100 full-time employees), the proposed new rules would impose recordkeeping and compliance requirements on those small businesses. The records that an employer hiring entity must keep under the proposed new rules (as mandated by the Act), are basic employment and business records that the employer hiring entity should already be keeping, such as hours worked by the domestic worker, the rate(s) of pay of the domestic worker, meal and rest periods provided to the domestic worker, leave time earned and used by the domestic worker (if applicable),

and the written agreement between the domestic worker and the employer hiring entity. As to compliance requirements, as described in the Summary above, those requirements and the recordkeeping requirements are expressly dictated by the Act, from which the Department has no discretion to deviate based upon the size of a business or for any other reason.

Housing Affordability Impact Analysis

The proposed amendment and new rules would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed amendment and new rules pertain to the working conditions of domestic workers. The proposed amendment and new rules do not pertain to housing.

Smart Growth Development Impact Analysis

The proposed amendment and new rules would not evoke a change in the 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 proposed amendment and new rules pertain to the working conditions of domestic workers. The proposed amendment and new rules 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 Commissioner has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

12:56-3.6 Exemptions from the statutory minimum wage rates

(a) Employees in the following occupations shall be exempt from the statutory minimum wage rates:

1. through 3. (No change.)

[4. Part time employees primarily engaged in the care and tending of children in the home of the employer;]

[5.] **4.** Minors under 18 years of age except as provided at N.J.A.C. 12:56-11, 13, and 14, and 12:57, Wage Orders for Minors; and

[6.] **5.** At summer camps, conferences, and retreats operated by any nonprofit or religious corporation or association during the months of June, July, August, and September.

CHAPTER 73 DOMESTIC WORKERS

SUBCHAPTER 1 GENERAL PROVISIONS

12:73-1.1 Purpose

The purpose of this chapter is to implement N.J.S.A. 34:11-69 through 79 (the Act), which contains workplace protections, as well as hiring entity

responsibilities, that are enforced by the Department of Labor and Workforce Development for the benefit of domestic workers.

12:73-1.2 Retaliation prohibited

(a) No hiring entity shall retaliate through discharge or in any other manner retaliate against a domestic worker for exercising any rights granted the domestic worker under the Act or this chapter, including but not limited to, the following:

1. Making a complaint to a hiring entity, to a co-worker, to a community organization, before a public hearing, or to a State or federal agency that rights guaranteed under the Act or this chapter have been violated;

2. Instituting any proceeding under or related to the Act or this chapter; or

3. Testifying or preparing to testify in an investigation or proceeding under the Act or this chapter.

(b) When within 90 days of the domestic worker's exercise of rights protected under the Act or this chapter a hiring entity takes any adverse action against the domestic worker, there shall arise a rebuttable presumption that the adverse action was in retaliation for the domestic worker's exercise of rights.

(c) In the case of temporary or seasonal employment that ends within 90 days of the domestic worker's exercise of rights protected under the Act or this chapter, the rebuttable presumption of retaliation in (b) above shall also arise if

the employer hiring entity fails to rehire the domestic worker at the next opportunity for work in the same position.

(d) No hiring entity shall communicate to a domestic worker exercising the domestic worker's rights under the Act, the willingness or intent to contact, report to, or to make an implied or express assertion to report to a government agency regarding the suspected citizenship or immigration status of a domestic worker or family member of a domestic worker, because the domestic worker has or has expressed an intent to exercise rights protected under the Act or this chapter or because of a belief that the domestic worker may do so.

12:73-1.3 Administrative penalties

(a) As an alternative or in addition to any other sanction provided for in the Act or this chapter, when the Commissioner finds that a hiring entity has violated the Act, the Commissioner is authorized to assess and collect an administrative penalty in the amounts that follow:

- 1. First violation – not more than \$250.00;**
- 2. Second and subsequent violations – not less than \$25.00 nor more than \$500.00.**

(b) In assessing an administrative penalty under this section, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violation(s):

- 1. The seriousness of the violation(s);**

- 2. The past history of previous violations by the hiring entity;**
- 3. The good faith of the hiring entity;**
- 4. The size of the hiring entity's business; and**
- 5. Any other factors which the Commissioner deems appropriate.**

(c) No administrative penalty shall be levied pursuant to this section unless the Commissioner provides the alleged violator with written notification of the violation and the amount of the penalty and an opportunity to request a formal hearing under N.J.A.C. 12:73-1.5.

12:73-1.4 Remedies

(a) As an alternative or in addition to any other sanction provided for in the Act or this chapter, when the Commissioner finds that an employer hiring entity has violated the Act or this chapter, the Commissioner shall be authorized, where appropriate, to order reinstatement of the domestic worker and back pay for lost wages and benefits.

(b) As an alternative or in addition to any other sanction provided for in the Act or this chapter, when the Commissioner finds that an employer hiring entity has violated any of the requirements contained in N.J.A.C. 12:73-4.1 through 4.5 (Rest and Meal Periods), the Commissioner is authorized to order payment by the employer hiring entity to the domestic worker of an amount equal to between one hour and two hours of pay at the domestic worker's regular rate of pay, for each workday that the violation occurred.

1. For a first violation of any of the requirements contained in N.J.A.C. 12:73-4.1 through 4.5 (Rest and Meal Periods), the employer hiring entity shall be ordered to pay the domestic worker an amount equal to one hour of pay at the domestic worker's regular rate of pay; and

2. For the second and each subsequent violation of any of the requirements contained in N.J.A.C. 12:73-4.1 through 4.5 (Rest and Meal Periods), the employer hiring entity shall be ordered to pay the domestic worker an amount equal to two hours of pay at the domestic worker's regular rate of pay.

(c) As an alternative or in addition to any other sanction provided for in the Act or this chapter, when the Commissioner finds that an employer hiring entity has failed to provide the notice of termination of employment required under N.J.A.C. 12:73-5.1, the Commissioner is authorized to order payment by the employer hiring entity to the domestic worker of an amount equal to one day of wages at the domestic worker's regular hourly rate of pay for each day that the notification was deficient.

(d) As an alternative or in addition to any other sanction provided for in the Act or this chapter, when the Commissioner finds that a hiring entity has violated a provision of the Act or this chapter for which none of the remedies listed in (a) through (c) above is an appropriate remedy, the Commissioner shall be authorized to order payment by the hiring entity to the domestic worker of the following presumed damages:

1. First violation – not more than \$250.00;

2. Second and subsequent violations – not less than \$25.00 nor more than \$500.00.

(e) In assessing presumed damages under (d) above, the Commissioner shall consider the following factors, where applicable, in determining what constitutes appropriate presumed damages for the particular violation(s):

- 1. The seriousness of the violation(s);**
- 2. The past history of previous violations by the hiring entity;**
- 3. The good faith of the hiring entity;**
- 4. The size of the hiring entity's business; and**
- 5. Any other factors which the Commissioner deems appropriate.**

(f) No remedy shall be final pursuant to this section unless the Commissioner provides the alleged violator with written notification of the violation and the remedy ordered and an opportunity to request a formal hearing under N.J.A.C. 12:73-1.5.

12:72-1.5 Hearings

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:73-1.3 or orders a remedy under N.J.A.C. 12:73-1.4, the hiring entity against which the administrative penalty has been assessed or remedy ordered shall have the right to a hearing under (b) below.

(b) No administrative penalty shall be levied under N.J.A.C. 12:73-1.3, nor shall any remedy become final under N.J.A.C. 12:73-1.4, unless the Commissioner provides the alleged violator with written notification of the violation and the

amount of the penalty and/or amount or type of remedy and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following receipt of the notice. All hearings shall be held pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

(c) All requests for hearing will be reviewed by the Division of Wage and Hour Compliance to determine if the dispute may be resolved at an informal settlement conference. If following its review, the Division determines that an informal settlement conference is warranted, such a conference shall be scheduled. If a settlement cannot be reached, the case will be forwarded to the Office of Administrative law for a formal hearing.

(d) The Commissioner shall make the final decision of the Department.

(e) If the hiring entity fails to request a formal hearing within 15 days following receipt of the notice, the notice shall become a final order.

(f) Appeals of the final decision of the Commissioner under (d) above or a final order under (e) above shall be made to the Appellate Division of the New Jersey Superior Court.

12:72-1.6 Processing of complaints

(a) Any complaint filed with the Division that alleges a violation of the Act or this chapter shall be processed in the same manner as a complaint filed with the Division under the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a et seq., and the rules promulgated thereunder.

12:73-1.7 Notification of rights of domestic workers

(a) A hiring entity shall provide to each domestic worker that it employs or engages to work notification of the rights of domestic workers under the Act and this chapter, and information on how to file a complaint for a violation of the rights of domestic workers under the Act and this chapter.

(b) The form of the notification under (a) above shall be made available by the Commissioner to hiring entities on the Department's internet website.

SUBCHAPTER 2 DEFINITIONS

12:73-2.1 Definitions

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

“Act” means N.J.S.A. 34:11-69 through 79.

“Benefits” means employee fringe benefits, including but not limited to, health insurance, life insurance, disability insurance, paid time off (including vacation, holidays, personal leave and sick leave) training, and pension.

“Casual work” means work that is:

- (1) Irregular, uncertain, or incidental in nature and duration; and**
- (2) Different in nature from the type of work in which the worker is customarily engaged.**

“Commissioner” means the Commissioner of the Department of Labor and Workforce Development or his or her designee.

“Department” means the Department of Labor and Workforce Development.

“Domestic services” means services of a household nature and performed by an individual in or about a private home on a permanent or temporary basis and includes services performed by a domestic worker.

“Domestic worker” or “worker” means hourly and salaried employees, full-time and part-time individuals, and temporary individuals and is narrowly construed to mean any worker who:

(1) works for one or more employers; and

(2) is an individual who works in residence for the purposes of providing any of the following services: caring for a child; serving as a companion or caretaker for a sick, convalescing, or elderly person or a person with a disability; housekeeping or house cleaning; cooking; providing food or butler service; parking cars; cleaning laundry; gardening; personal organizing; or for any other domestic service purpose.

“Domestic worker” or “worker” does not include the following:

(a) A family member, with “family member” meaning a spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister, whether the individual is related by blood, marriage, or adoption;

(b) An individual primarily engaged in house sitting, pet sitting, or dog walking;

(c) An individual working at a business operated primarily out of the residence, such as a home day-care business;

(d) An individual whose primary work involves household repair or maintenance, such as a roofer, plumber, mason, painter, or other similar contractor;

(e) An employee of the State or the United States; or

(f) An individual established as a kinship legal guardian, as defined by N.J.S.A. 3B:12A-2, of a child who lives in the residence or an individual who participates in the Kinship Navigator Program, as authorized by the Department of Children and Families, as a caregiver of a child who lives in the residence and receives services provided by a kinship navigator service provider.

“Employ” means to suffer or to permit to work.

“Employee” means “employee” as that term is defined at N.J.S.A. 34:11-4.1(b).

“Employer” means “employer” as that term is defined at N.J.S.A. 34:11-4.1(a).

“Employment agency” means any person or entity that procures, or attempts to procure, any workers for referral to a third party.

“Hiring entity” means any employer, as defined in N.J.S.A. 34:11-4.1, who employs a domestic worker and also means any person, firm, business,

partnership, association, corporation, limited liability company, or other entity, including referral, employment, and internet based or on-demand platforms, that provides compensation directly or indirectly to a domestic worker for the performance of domestic services and any person or persons acting directly or indirectly in the interest of the employer in relation to the domestic worker.

“Live-in domestic worker” includes any domestic worker, who, as part of their employment, reside in the personal residence of the employer.

“Referral agency” means any person or entity that procures, or attempts to procure, directly or indirectly through placement in a physical or virtual labor pool:

(1) employees; and

(2) after procurement does not continue involvement in the terms of exchange of domestic services with the employees in any way, with the exception of the following:

i. continuing to display, host, or advertise, either through physical means or virtual means, the workers’ contact information, job qualifications, resume, image, or digital profile, which employers or clients can use to independently contact employees about employment; or

ii. removing, either through physical means or virtual means, the workers’ contact information, job qualifications, resume, image, or digital profile, which employers or clients can use to

independently contact employees, upon the mandate of any federal, State or local laws.

“Written” or “writing” means a printed or printable communication in physical or electronic form, including a communication that is transmitted through email, text message, or a computer system, or is otherwise sent and maintained electronically.

SUBCHAPTER 3 WRITTEN EMPLOYMENT CONTRACT

12:73-3.1 Written employment contract requirement – Employer hiring entity

(a) Prior to the commencement of employment, each employer of a domestic worker shall draft and offer to the domestic worker a written contract of employment, which contains the following, at a minimum:

- 1. The term of the contract,**
- 2. A specific list of the domestic worker’s job duties;**
- 3. The regular hourly wage and hourly wage for overtime, which will be paid by the employer to the domestic worker;**
 - i. If the domestic worker’s hourly wage and hourly wage for overtime will vary from week to week, then the employer may substitute a statement to that effect; provided that the employer also agrees within the body of the written contract to notify the domestic worker prior to the start of each workweek, of the worker’s hourly wage and hourly wage for overtime for that week;**

4. The domestic worker's weekly schedule including the number of hours that the domestic worker will be working each week;

i. If the domestic worker's weekly schedule will vary from week to week, then the employer may substitute a statement to that effect; provided that the employer also agrees within the body of the written contract to notify the domestic worker prior to the start of each workweek, of the weekly schedule for that week, including the number of hours that the domestic worker will be working;

5. The manner and frequency of payment by the employer of the domestic worker's wages;

6. A listing of the frequency, duration and nature of rest and meal periods which will be provided by the employer to the domestic worker, including a description of any conditions placed by the employer on the domestic worker during such rest and meal periods;

7. A listing and description of any paid or unpaid leave provided by the employer to the domestic worker, including but not limited to, sick time and paid holidays;

8. A listing and description of any benefits other than paid or unpaid leave provided by the employer to the domestic worker;

9. A listing and description of the modes of transportation required, if any, and whether such transportation is provided by the employer to the domestic worker;

10. If housing is provided by the employer to the domestic worker, the value of such housing;

11. For live-in domestic workers, a listing and description of the sleeping period and personal time, including a description of any conditions placed by the employer on the domestic worker during such sleeping periods or personal time;

12. Any other terms and conditions of employment.

(b) Each employer of a domestic worker, prior to the commencement of employment, shall afford the domestic worker an opportunity to negotiate the terms of the written employment contract provided by the employer to the domestic worker in draft under (a) above.

1. Each employer of a domestic worker shall provide the domestic worker no less than three business days to review the draft written employment contract that has been provided to the domestic worker by the employer.

(c) No employer shall employ a domestic worker until a written contract of employment containing, at a minimum, the items listed in (a)1. through (a)12., above, has been agreed to and signed by both the employer and the domestic worker.

(d) The written employment contract required under this section shall not contain any of the following:

1. A mandatory pre-dispute arbitration agreement for claims made by a domestic worker against a hiring entity regarding the local rights of the domestic worker; or

2. A non-disclosure agreement, or non-competition or non-disparagement agreement, limiting the ability of the domestic worker to seek compensation for performing domestic services after the worker ceases to receive compensation from the hiring entity for the performance of domestic services.

(e) The written employment contract required under this section shall not be construed to waive the protections of domestic workers under federal, State, or local laws.

(f) The written employment contract required under this section shall be in English and such other language as may be preferred by the domestic worker.

1. The employer shall make reasonable efforts to determine if the domestic worker would prefer the written employment contract to be in a language other than English.

(g) Where, applying the standard at N.J.A.C. 12:73-8.1, there are joint employers of a domestic worker, there shall be a single written employment contract that is signed by each joint employer and by the domestic worker.

(h) The Department shall make available on its internet website for use by employers of domestic workers a model written employment contract or model written employment contracts that would comply with the requirements of the Act.

(i) A material breach by an employer of a written employment contract with a domestic worker shall constitute a violation of the Act, without regard to whether the breach is of a provision required by the Act.

12:73-3.2 Written employment contract requirement – Non-employer hiring entity

(a) On the date a referral agency or employment agency enters into an agreement with a prospective employer or prospective joint employers to employ a domestic worker, the referral agency or employment agency shall:

- 1. Provide both the domestic worker and the prospective employer(s) with a copy of Subchapter 3 of N.J.A.C. 12:73; and**
- 2. Provide the prospective employer(s) with any model written employment contracts that have been made available on the Department's internet website.**

12:73-3.3 Written employment contract requirement – exemption

(a) This subchapter shall not apply when the domestic worker is performing casual work or work of less than five hours per month.

SUBCHAPTER 4 MEAL AND REST PERIODS

12:73-4.1 Meal periods

(a) After more than five consecutive hours worked by the domestic worker, the domestic worker's employer(s) shall provide the domestic worker with a 30-minute meal period.

(b) The meal period provided to the domestic worker under (a) above may be unpaid, provided that the domestic worker is both relieved of all work duties and permitted to leave the work site during the meal period.

(c) Where the domestic worker is not relieved of all work duties and is not permitted to leave the work site during the meal period, the meal period shall be considered "on-duty," subject to the requirements of N.J.A.C. 12:73-4.4, and the domestic worker shall be paid for the meal period at the domestic worker's regular rate of pay.

(d) Where the domestic worker takes a rest period under N.J.A.C. 12:73-4.2, that shall not result in a break in "consecutive hours worked," as that term is used in (a) above.

12:73-4.2 Rest periods

(a) For each four consecutive hours worked by the domestic worker, the employer(s) of a domestic worker shall provide the domestic worker with a rest period of not less than ten minutes.

(b) Where the domestic worker is not relieved of all work duties during the rest period, the rest period shall be considered "on-duty," subject to the requirements of N.J.A.C. 12:73-4.4.

(c) The domestic worker shall be paid for the rest period at the domestic worker's regular rate of pay, regardless of whether the rest period is considered "on-duty."

12:73-4.3 Live-in domestic worker; 24-hour period of rest

(a) A live-in domestic worker shall not be required to work more than six consecutive days for the same employer without a 24-hour period of rest.

(b) During the 24-hour period of rest provided to the live-in domestic worker under (a) above, the live-in domestic worker shall be both relieved of all work duties and permitted to leave the work site.

(c) The 24-hour period of rest provided to the live-in domestic worker under (a) above may be unpaid.

12:73-4.4 "On-duty" meal and rest periods

(a) An "on-duty" meal period shall be permitted only when each of the following requirements are met:

- 1. When the nature of the work prevents the domestic worker from both being relieved of all duties and being permitted to leave the work site; and**
- 2. When there is a written agreement between the domestic worker and the employer(s) of the domestic worker allowing for "on-duty" meal periods.**

(b) An “on-duty” rest period shall be permitted only when each of the following requirements are met:

1. When the nature of the work prevents the domestic worker from being relieved of all duties; and

2. When there is a written agreement between the domestic worker and the employer(s) of the domestic worker allowing for “on duty” rest periods.

(c) The written agreement between the domestic worker and the employer(s) of the domestic worker under (a)(2) and (b)(2), above, may be revoked in writing by the domestic worker at any time.

(d) During an “on duty” meal period or rest period, the domestic worker shall, to the extent possible given the domestic worker’s duties for the employer(s), be permitted to engage in personal activities, such as resting, eating a meal, drinking a beverage, making a personal telephone call, or making other personal choices.

(e) During all “on-duty” meal periods and rest periods, the domestic worker shall be paid at the domestic worker’s regular rate of pay.

12:73-4.5 Prohibition against impeding or discouraging use of meal or rest periods

(a) The employer of a domestic worker shall not impede or discourage a domestic worker from using a meal or rest period.

SUBCHAPTER 5 TERMINATION OF EMPLOYMENT; NOTIFICATION

12:73-5.1 Termination of employment; notification

(a) With the exception of the circumstances described in (b) and (c) below, the employer(s) of a domestic worker shall notify the domestic worker of a termination of employment no less than 14 calendar days prior to the termination of employment.

(b) The employer(s) of a live-in domestic worker shall notify the live-in domestic worker of a termination of employment no less than 28 calendar days prior to the termination of employment.

(c) The notification requirements in (a) and (b) above shall not apply under the following circumstances:

1. Where the employer(s) has a good faith belief, and without reckless disregard or willful ignorance of the truth, that the domestic worker has engaged in significant misconduct;

i. For the purpose of this section, the term “significant misconduct” shall mean that the domestic worker abused, neglected, or caused any other harmful conduct against the employer, members of the employer’s family, or individuals residing in the employer’s household;

2. Where the employer is a temporary help service firm, employment agency, or other staffing or placement agency, health care service firm, home health agency, or hospice provider, when the domestic worker

completes placement in a particular position and is not immediately placed or scheduled for another position by the employer, but the domestic worker remains on the employer's payroll for future placement opportunities; or

3. Where the employer is an individual and not a temporary help service firm, employment agency, or other staffing or placement agency, health care service firm, home health agency, or hospice provider, the domestic worker completes or fulfills all duties of the position, and there is no longer a practicable need for the position, including but not limited to, if the domestic worker's employer is an individual who has employed the domestic worker to care for a person who is terminally ill and the terminally ill person dies.

SUBCHAPTER 6 DOMESTIC WORKER PRIVACY

12:73-6.1 Prohibitions relating to domestic worker privacy

(a) A hiring entity shall be prohibited from any of the following:

1. Keeping or holding the original copies of any personal documents of a domestic worker;

2. Monitoring or recording, through any means, the activities of a domestic worker:

i. Using any bathroom or similar facility;

ii. In the living quarters of a domestic worker; or

- iii. While the domestic worker is engaged in any activities associated with dressing or changing clothes; or
- 3. Monitoring, recording, or interfering with the private communications of a domestic worker

SUBCHAPTER 7 RECORDKEEPING

12:73-7.1 Recordkeeping

(a) For each domestic worker employed by a hiring entity, the employer hiring entity shall maintain the following records for a period of no less than two years:

- 1. Hours worked by the domestic worker;
- 2. Rate(s) of pay of the domestic worker;
- 3. Meal and rest periods provided to the domestic worker;
- 4. Leave time earned and used by the domestic worker, if applicable;

and

- 5. The written agreement between the domestic worker and the employer hiring entity.

(b) A hiring entity shall make all records relating to the employment of a domestic worker available for inspection by the Department, consistent with the powers of the Commissioner under N.J.S.A. 34:11-4.9.

(c) If a hiring entity does not maintain the required records or does not allow the Department reasonable access to the records, an adverse inference

may be drawn as to the hiring entity's compliance with the provisions of the Act and this chapter that would otherwise have been documented by the record(s) at issue.

SUBCHAPTER 8 JOINT EMPLOYERS

12:73-8.1 Joint employers

(a) For all purposes under this chapter, two or more employers of the same employee are joint employers of that employee if the employers share or codetermine those matters governing the employee's essential terms and conditions of employment.

(b) To "share or codetermine those matters governing the employee's essential terms and conditions of employment" means for an employer to possess the authority to control (whether directly, indirectly, or both) or to exercise the power to control (whether directly, indirectly, or both) one or more of the employee's essential terms and conditions of employment.

(c) "Essential terms and conditions of employment" include the following:

1. Wages, benefits and other compensation;
2. Hours of work and scheduling;
3. The assignment of duties to be performed;
4. The supervision of the performance of duties;
5. Work rules and directions governing the manner, means and methods of the performance of duties and the grounds for discipline;

6. The tenure of employment, including hiring and discharge; and

7. Working conditions related to the safety and health of the employee.

(d) Whether an employer possesses the authority to control or exercise the power to control one or more of the employee's essential terms and conditions of employment is determined under common-law agency principles. For the purposes of this section:

1. Possessing the authority to control one or more essential terms and conditions of employment is sufficient to establish status as a joint employer, regardless of whether control is exercised;

2. Exercising the power to control indirectly (including through an intermediary) one or more essential terms and conditions of employment is sufficient to establish status as a joint employer, regardless of whether the power is exercised directly.

(e) A joint employer of a domestic worker is subject to each of the requirements of this chapter that apply to an employer of a domestic worker.