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RULE ADOPTIONS

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

46 N.J.R. 1973(a)

Adopted Amendment: N.J.A.C. 12:56-3.1

Minimum Wage

Proposed: May 19, 2014, at *46 N.J.R. 839(a)*.

Adopted: August 14, 2014, by Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Filed: August 14, 2014, as R.2014 d.144, **without change**.

Authority: *N.J.S.A. 34:1-20* and *New Jersey Constitution, Article I, Paragraph 23*.

Effective Date: September 15, 2014.

Expiration Date: August 4, 2018.

Summary of Hearing Officer's Recommendation and Agency's Response:

A public hearing regarding the proposed amendment was held on June 16, 2014, at the Department of Labor and Workforce Development, John Fitch Plaza, Trenton, New Jersey. David Fish, Executive Director, Legal and Regulatory Services, was available to preside at the hearing and to receive testimony. No one testified at the public hearing. The Department received a single written comment. The hearing officer reviewed the single written comment and recommended that the Department proceed with the new rules without change.

Summary of Public Comment and Agency Response:

A written comment was submitted by Jean Public (address unknown).

COMMENT: The following is the commenter's remarks in their entirety: I cannot attend your meeting which meets at the same time as the NJ Legislature. Strange scheduling conflict. But I believe that the minimum wage should not be increased. This comment is for the public record.

RESPONSE: As indicated in the May 19, 2014, notice of proposal, *Article I, Paragraph 23, of the New Jersey Constitution* requires that the State hourly minimum wage rate be increased. The Department has no discretion to deviate from the State Constitution.

Federal Standards Analysis

Section 6 of the Federal "Fair Labor Standards Act of 1938" (29 U.S.C. § 206), contains a minimum hourly wage rate of \$ 7.25, with no scheduled adjustments, annual or otherwise; whereas *N.J.A.C. 12:56-3.1*, as amended, contains a minimum hourly wage rate, effective January 1, 2014, of \$ 8.25, with an annual cost of living adjustment to that rate based on any increase in the CPI-W, U.S. City Average, during the preceding year. The existence of a minimum hourly wage rate in New Jersey which exceeds the Federal minimum hourly wage rate will most certainly have an economic impact on all of the citizens of this State, whether those citizens are minimum wage earners who will receive a pay raise, business owners who will be required to pay the heightened minimum hourly wage rate to their employees, or citizens of the State who are neither minimum wage earners, nor business owners, who will be impacted in one way or another (whether positively or negatively) by the existence of a minimum hourly wage rate in New Jersey which exceeds the Federal minimum hourly wage rate. However, as explained earlier, the Department has no discretion to deviate from the recently amended State Constitution, which, effective January 1, 2014, increased the State minimum hourly wage rate to \$ 8.25 and which requires that the rate be adjusted annually to account for increases in the cost of living, as reflected by annual percentage increases in the CPI-W.

Full text of the adoption follows:

12:56-3.1 Statutory minimum wage rates for specific years

(a) Except as provided in *N.J.A.C. 12:56-3.2*, every employee shall, effective January 1, 2014, be paid not less than \$ 8.25 per hour, the minimum hourly wage rate set by section 6(a)(1) of the Federal "Fair Labor Standards Act of 1938" (29 U.S.C. § 206(a)(1)), or the rate provided under *N.J.S.A. 34:11-56a4*, whichever is greatest.

(b) On an annual basis, on or about September 30, the Department shall revise the minimum hourly wage set forth in (a) above based on any percentage increase during the one-year period of August of the prior year through August of the current year of the consumer price index (CPI) for all urban wage earners and clerical workers (CPI-W, U.S. City Average), as released by the United States Department of Labor, Bureau of Labor Statistics. Annually, the Department shall, through a public notice published in the New Jersey Register, provide the new CPI-W, U.S. City Average, adjusted minimum hourly wage.

(c) The Department shall, no later than September 30 of each year, publish a notice, as set forth in (b) above, on the Department's website, <http://lwd.dol.state.nj.us/labor>.