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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WORKFORCE DEVELOPMENT**

49 N.J.R. 244(a)

Proposed Readoption with Amendments: *N.J.A.C. 12:23*

Proposed Repeal: *N.J.A.C. 12:23-6.3*

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

Workforce Development Partnership Program

Authorized By: Aaron R. Fichtner, Ph.D., Acting Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:15D-1* et seq., specifically, 34:15D-11.

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

Proposal Number: PRN 2017-020.

A **public hearing** on the proposed readoption with amendments will be held on the following date at the following location:

February 28, 2017
10:00 A.M. to 12:00 Noon
NJ Department of Labor and Workforce Development
John Fitch Plaza
10th Floor, Large 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 April 7, 2017, to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services

NJ Department of Labor and Workforce Development
PO Box 110-13th Floor
Trenton, New Jersey 08625-0110
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The agency proposal follows:

Summary

Pursuant to *N.J.S.A. 52:14B-5.1*, *N.J.A.C. 12:23*, the chapter which addresses the Workforce Development Partnership Program (WDPP), was scheduled to expire on January 4, 2017. As the agency submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date is extended 180 days to July 3, 2017, pursuant to *N.J.S.A. 52:14B-5.1.c(2)*. The Department of Labor and Workforce Development (Department) has reviewed *N.J.A.C. 12:23* and, with the exception of the amendments and repeal described in detail below, the Department has determined the chapter to be necessary, reasonable, and proper for the purposes for which it was originally promulgated. Accordingly, the Department proposes that *N.J.A.C. 12:23* be readopted with amendments and a repeal.

A summary of the subchapters of *N.J.A.C. 12:23* follows:

N.J.A.C. 12:23-1 contains definitions of words and terms used throughout the chapter.

N.J.A.C. 12:23-2 addresses customized training services, setting forth eligibility criteria, and establishing procedures for the application and approval process.

N.J.A.C. 12:23-3 concerns individual training grants for qualified displaced workers.

N.J.A.C. 12:23-4 describes types of approved training under WDPP.

N.J.A.C. 12:23-5 sets forth the criteria for receipt of additional unemployment benefits during training.

N.J.A.C. 12:23-6 addresses employment and training services for qualified disadvantaged workers (as opposed to qualified displaced workers or employed workers).

N.J.A.C. 12:23-7 sets forth the application, review, and administrative process for the awarding of grants under WDPP for occupational safety and health training services to qualified displaced, disadvantaged, and employed workers.

N.J.A.C. 12:23-8 establishes criteria and procedures for administration of the tuition waiver program for unemployed individuals.

N.J.A.C. 12:23-9 concerns administration of the Supplemental Workforce Fund for Basic Skills.

N.J.A.C. 12:23-10 addresses the collection of records, reports, and information on student enrollment, outcome, licensing, and credentialing for use by the Department in administering WDPP and other employment and training programs.

N.J.A.C. 12:23-11 is reserved.

N.J.A.C. 12:23-12 establishes a standard with regard to what constitutes "satisfactory progress," as that term is used within P.L. 2005, c. 66, regarding the State Rental Assistance Program, and to establish a system for monitoring "satisfactory progress" for the purposes of certifying to the Department of Community Affairs whether recipients of rental assistance grants are showing satisfactory progress in carrying out the training and educational activities set forth in their employability development plans.

N.J.A.C. 12:23-13 contains rules regarding victims of domestic violence and the State's One-Stop Career Centers.

A description of the proposed amendments and repeal follow:

At *N.J.A.C. 12:23-1.1*, Definitions, the Department proposes that the definition of the term, "domestic violence," be amended, so as to include four additional criminal offenses, which are considered instances of "domestic violence," as that term is defined within *N.J.S.A. 2C:25-19*. Specifically, the Department is proposing the addition of criminal coercion, robbery, contempt of a domestic violence order pursuant to *N.J.S.A. 2C:29-9.b* that constitutes a crime or disor-

derly persons offense, and any other crime involving risk of death or serious bodily injury to a person protected under the "Prevention of Domestic Violence Act of 1991, P.L. 1991, c. 261.

At *N.J.A.C. 12:23-1.1*, Definitions, the Department proposes to replace the existing definition of the term, "labor demand occupation," with the definition of "labor demand occupation," that appears within *N.J.S.A. 34:15C-1*, as amended by P.L. 2005, c. 354. The existing definition, which would be replaced, states that the New Jersey Occupational Information Coordinating Committee (NJOICC) is responsible for determining whether a given occupation is a "labor demand occupation." The Legislature, through P.L. 2005, c. 354, replaced NJOICC with the Center for Occupational Employment Information (COEI) and empowered COEI to determine whether an occupation is a "labor demand occupation." The existing definition also states that the standard for determining whether an occupation is a "labor demand occupation," is whether there is likely to be an excess of demand over supply for adequately trained workers, whereas P.L. 2005, c. 354, states that COEI (or COEI, in conjunction with a Workforce Investment Board) will determine whether a particular occupation is or [page=245] will be, on a regional basis, subject to a significant excess of demand over supply for trained workers, based on a comparison of the total need or anticipated need for trained workers with the total number being trained. Again, these differences between the existing definition and proposed new definition for the term "labor demand occupation" are the direct result of the passage of P.L. 2005, c.354; which is to say, the proposed new definition for the term "labor demand occupation" is taken verbatim from that law; which is to say further, that the proposed new definition for the term "labor demand occupation," is the definition that currently appears within *N.J.S.A. 34:15C-1*.

At *N.J.A.C. 12:23-1.1*, Definitions, the Department proposes that the definition of the term, "qualified displaced worker," be amended, so as to replace the reference within that definition to the Workforce Investment Act of 1998, P.L. 105-220 (29 U.S.C. §§ 1651 et seq.), with a reference to the Workforce Innovation and Opportunity Act, P.L. 113-128 (29 U.S.C. §§ 3101 et seq.).

At *N.J.A.C. 12:23-3.1(d)3*, the Department proposes to replace, "and/or" with "or." This amendment would in no way change the meaning of the rule.

At *N.J.A.C. 12:23-4.1(a)*, the Department proposes to delete "an approved," in the phrase, "the training must be with an approved training provider located in the State." As amended, the second sentence of the subsection would read, "In all cases, the training must be with a training provider located in the State." The term "training provider," is already defined in the chapter to mean a provider of education or training services that is approved by a State or Federal agency authorized to approve such entities, meets the requirements of the State Employment and Training Commission, and is listed on the Eligible Training Provider List. In light of the foregoing, there is no need within *N.J.A.C. 12:23-4.1* to refer to a training provider as an "approved training provider." It is redundant.

The Department proposes to repeal *N.J.A.C. 12:23-6.3*, Innovative demonstration project funds. The program referred to within this section is no longer active. Consequently, there is no need for the section.

At *N.J.A.C. 12:23-6.8(a)2*, the Department proposes to eliminate the express criterion for evaluation of employment and training services that the provider achieve a minimum job placement goal of 70 percent, and replace it with a statement that among the criteria upon which results of employment and training services are evaluated will be "the percentage of job placement." The Department was unable to find any support in the law or elsewhere for the imposition of a strict 70 percent job placement requirement.

At *N.J.A.C. 12:23-6.8(a)3*, the Department is proposing to eliminate a superfluous reference to the method by which the term "labor demand occupation," is defined. A definition of that term already exists within this chapter. All of the deleted text already appears within that existing definition.

At *N.J.A.C. 12:23-7.5(b)*, the Department proposes to delete the phrase, "in consultation with specialized services." It is unclear what is meant by "specialized services." It is believed that it refers to staff within the Department with expertise in the area of occupational safety and health. What is clear is that applications are evaluated by the Department and that any consultation that occurs is amongst Department employees. Thus, the existing reference to "consultation with specialized services" is unnecessary.

At *N.J.A.C. 12:23-8.2*, Definitions, the Department proposes to delete the definition of the term, "labor demand occupation." This term is already defined at *N.J.A.C. 12:23-1.1*. That definition applies throughout the entire chapter, including Subchapter 8. Thus, a separate listing of the definition within *N.J.A.C. 12:23-8.2* is unnecessary.

As the Department has provided a 60-day comment period on 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 continued availability, under WDPP, of employment and training services for eligible unemployed, employed, and displaced workers will positively impact upon both New Jersey's employers and workers. Specifically, employers will continue to be eligible for financial assistance in order to enhance their efforts toward arranging comprehensive packages of services to meet their employment and training needs, thereby enabling those employers to better compete in the marketplace with the increased productivity gained from a better trained workforce. Similarly, workers will derive a significant benefit in the way of increased work skills and earning power by virtue of the availability of training offered both on-the-job and in the cooperation with educational and/or training institutions. The State's economy will benefit from the readoption of the WDPP rules with amendments and a repeal, as they will continue to facilitate the enhancement of workers' employment opportunities through vocational and remedial training, thereby generating tax revenue and resulting in contributions to, rather than deductions from, the Unemployment Insurance Trust Fund. Moreover, the economy will continue to be strengthened through stimulation from the earnings of employed workers.

Economic Impact

The creation and retention of jobs in New Jersey are critical to improving the State's economy. The wide range of employment and training services and financial assistance available through the WDPP, including customized training services, individual training grants, and tuition waivers, will continue to result in an increase in jobs created and businesses retained within the State, and in providing a skilled workforce to fill these jobs, thereby contributing to the stimulation of New Jersey's economy. Customized training activities will also contribute to an environment favorable to start-up growth and prosperity for all types of businesses, thereby expanding the employment base within the State. Customized training services will also continue to be particularly beneficial to small businesses, which are the principal source of job creation in New Jersey, but which often lack the financial resources necessary to expand their operations.

Federal Standards Statement

On July 22, 2014, the Workforce Innovation and Opportunity Act (WIOA) was signed into law, reauthorizing the Workforce Investment Act of 1998, P.L. 105-220 for six years, from 2015 through 2020. WIOA opens the door to states' greater use of sector partnerships and career pathway models and includes higher levels of accountability and outcome data reporting. The rules proposed for readoption with amendments and a repeal do not exceed standards imposed by Federal law, including WIOA. The WDPP is a separate State-funded program that is not mandated under Federal law.

Jobs Impact

The readoption of the WDPP rules with amendments and a repeal, will have a positive impact upon jobs. Specifically, the Department expects that jobs will continue to be created and retained as a result of the adoption of WDPP rules, which are designed to provide employment and training services for New Jersey's eligible unemployed, employed, and displaced workers. Paramount to the attraction of business is a highly skilled workforce.

Agriculture Industry Impact

The rules proposed for readoption with amendments and a repeal will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments and a repeal will impose minimal reporting, recordkeeping, and compliance requirements upon businesses, including small businesses as defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. Through the WDPP's application and review process, eligible individuals and businesses will have access to financial assistance for their training needs. Businesses that provide training may be required to assist individuals in the completion of individual training grant applications and may be required to provide periodic progress and attendance reports, as well as maintain related records. Those businesses seeking customized training grants will also have to bear the costs of application, including the formulation of a business plan. In addition, they will have to incur costs associated with providing written reports and audits, so as to enable the Department to monitor and evaluate

their performance under the grant agreement and compliance with its terms and conditions. Further, the Department will continue to require businesses to contribute [page=246] a minimum of 40 percent of the costs of customized training services and will also continue to require the refund of all grant monies obtained by an employer who receives customized training services and leaves the State within three years of the ending date of the customized training contract.

The rules proposed for readoption with amendments and a repeal require the reporting of student outcome and licensing information by qualified agencies that oversee occupational and directly-related education and training at qualified schools or that issue occupational licenses. Student outcome information includes any relevant data items as specified by the State Employment and Training Commission or the Center for Occupational Employment Information, including a participant's Social Security number, demographic characteristics, date of enrollment, date of completion, date of termination, date of application for a license, licensing examination result, and date of issue of a license. As this sort of information is ordinarily collected and maintained by training providers as a matter of business practice, the requirement that it be provided to the Department will not necessitate the retention of additional professional services by small businesses. Whatever minimal costs will be incurred by training providers and government agencies in complying with the rules continue to be outweighed by the need for an effective and efficient workforce readiness system.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and a repeal would not evoke a change in the average costs associated with housing, nor would they have any effect on the affordability of housing in the State. The basis for this finding is that the rules proposed for readoption with amendments and a repeal, pertain to the WDPP, not housing.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and a repeal 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 and the rules would have an insignificant impact, if any at all, on smart growth. The basis for this finding is that the rules proposed for readoption with amendments and a repeal pertain to the WDPP and have nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 12:23*.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at *N.J.A.C. 12:23-6.3*.

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

SUBCHAPTER 1. DEFINITIONS

12:23-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

...

"Domestic violence" means the occurrence of one or more of the following acts inflicted upon a person protected under the Prevention of Domestic Violence Act of 1991, *N.J.S.A. 2C:25-17* et seq., by an adult or an emancipated minor:

1.-12. (No change.)

13. Harassment (*N.J.S.A. 2C:33-4*); [and/or]

14. Stalking (*N.J.S.A. 2C:12-10*)[.];

15. Criminal coercion (*N.J.S.A. 2C:13-5*);

16. Robbery (*N.J.S.A. 2C:15-1*);

17. Contempt of a domestic violence order pursuant to N.J.S.A. 2C:29-9.b that constitutes a crime or disorderly persons offense; and

18. Any other crime involving risk of death or serious bodily injury to a person protected under the "Prevention of Domestic Violence Act of 1991," P.L. 1991, c. 261 (N.J.S.A. 2C:25-17 et seq.).

...

["Labor demand occupation" means an occupation for which there is or is likely to be an excess of demand over supply for adequately trained workers as determined by the New Jersey Occupational Information Coordinating Committee (NJOICC) or as recommended by the local Workforce Investment Board (WIB) and approved by the Director of NJOICC based on documented local labor market data and projected labor market conditions.]

"Labor demand occupation" means an occupation, which:

1. The Center for Occupational Employment Information has, pursuant to N.J.S.A. 34:1A-86, determined is, or will be, on a regional basis, subject to a significant excess of demand over supply for trained workers, based on a comparison of the total need or anticipated need for trained workers with the total number being trained; or

2. The Center for Occupational Employment Information, in conjunction with a Workforce Investment Board, has, pursuant to N.J.S.A. 34:1A-86, determined is, or will be, in the region for which the Board is responsible, subject to a significant excess of demand over supply for adequately trained workers, based on a comparison of total need or anticipated need for trained workers with the total number being trained.

...

"Qualified displaced worker" means a worker who:

1. (No change.)

2. Meets the criteria set by the [Workforce Investment Act of 1998, P. L. 105-220 (29 U.S.C. §§ 1651 et. seq.)] **Workforce Innovation and Opportunity Act, P.L. 113-128 (29 U.S.C. §§ 3101 et seq.)** to be regarded as a "dislocated worker" under that Act.

...

SUBCHAPTER 3. INDIVIDUAL TRAINING GRANTS

12:23-3.1 Eligibility

(a)-(c) (No change.)

(d) An individual who has qualified for a training grant shall enter the training program identified in the Employability Development Plan as soon as possible.

1.-2. (No change.)

3. "Good cause" means any situation over which the individual did not have control [and/or] **or** which was so compelling as to prevent the individual from participating.

(e)-(f) (No change.)

SUBCHAPTER 4. APPROVED TRAINING UNDER THE WORKFORCE DEVELOPMENT PARTNERSHIP ACT

12:23-4.1 Approved training

(a) Approved training under the Act can include occupational training or remedial training, or it can include a combination of the two. In all cases, the training must be with [an approved] a training provider located in the State.

1.-2. (No change.)

(b) (No change.)

SUBCHAPTER 6. EMPLOYMENT AND TRAINING GRANTS FOR SERVICES TO DISADVANTAGED WORKERS

12:23-6.3 (Reserved)

12:23-6.8 Evaluation of employment and training services

(a) The results of employment and training or services provided under this subchapter shall be evaluated based upon the following criteria:

1. (No change.)

2. The [achievement of a minimum] **percentage of** job placement [goal of 70 percent]; and

3. The degree to which the training or services are related to a labor demand occupation [as defined by NJOICC or as recommended by the local Workforce Investment Board (WIB) and approved by the Director [page=247] of NJOICC based on local labor market conditions or project labor market conditions].

(b) (No change.)

SUBCHAPTER 7. OCCUPATIONAL SAFETY AND HEALTH TRAINING SERVICES

12:23-7.5 Review and evaluation of applications

(a) (No change.)

(b) Applications will be reviewed and evaluated by the Department of Labor and Workforce Development and [in consultation with specialized services, which] may be provided by the Department on a cost basis.

(c)-(h) (No change.)

SUBCHAPTER 8. TUITION POLICIES FOR UNEMPLOYED PERSONS; JOB TRAINING PROGRAM

12:23-8.2 Definitions

The following words and terms, when used in this subchapter, have the following meaning unless the context clearly indicates otherwise.

...

["Labor demand occupation" means an occupation, which:

1. The Center for Occupational Employment Information has, pursuant to *N.J.S.A. 34:1A-86*, determined is or will be, on a regional basis, subject to a significant excess of demand over supply for trained workers, based on a comparison of the total need or anticipated need for trained workers with the total number being trained; or

2. The Center for Occupational Employment Information, in conjunction with a Workforce Investment Board, has, pursuant to *N.J.S.A. 34:1A-86*, determined is or will be, in the region for which the board is responsible, subject to a significant excess of demand over supply for adequately trained workers, based on a comparison of total need or anticipated need for trained workers with the total number being trained.]

...