

New Jersey Wage and Hour Law Governing Employment in Wage Order No.11 Mercantile Occupations

12:57-3.1 Scope of subchapter

This subchapter shall apply to the minimum wage rates paid to all minors engaged in mercantile occupations, irrespective of the nature of the business of the employer or the location of the place where the work is being performed.

12:57-3.2 Definitions

(a) "Mercantile occupation" means:

1. Any employment in or for any industry or business selling or offering for sale any type of merchandise, wares, goods, articles or commodities.
2. All work connected with the soliciting of sales or opportunities for sale and the distributing of such merchandise, wares, goods, articles or commodities and the rendering of services incidental to the sale, use or upkeep of the same whether performed on the employer's premises or elsewhere, or
3. Work performed in the manufacturing of merchandise sold at retail upon the premises where it is manufactured.
4. Does not mean work performed in the manufacturing of merchandise which is sold at wholesale by the manufacturer.

(b) "Working time" means time for which wages are paid and includes both time worked and time of authorized attendance, whether or not work is provided and time spent in traveling, within the State of New Jersey, from one establishment to another which is authorized or requested by the employer.

12:57-3.3 Minimum wage

Minors under 18 years of age at mercantile occupations shall be paid not less than the statutory minimum wage rate.

12:57-3.4 Overtime rate

Overtime, at the rate of not less than one and one-half times the regular rate at which the employee is actually employed, shall be paid to each minor for hours worked in excess of 40 in any one week, except that the overtime rate shall not apply to an executive, professional or administrative employee who is paid for his services in accordance with Subchapter 7 of Chapter 56, Wage and Hour of Title 12, N.J.A.C.

12:57-3.5 Regular hourly wage

- (a) "Regular hourly wage" means the amount the employee is regularly paid for each hour of work.
- (b) The regular rate of pay at which the employee is employed shall not be less than the minimum rate established by N.J.A.C. 12:57-3.3.
- (c) When an employee is paid on a piece work basis or any other basis than an hourly rate, the regular hourly wage shall be determined by dividing the total of the hours worked during the week into the employee's total earnings exclusive of part time bonuses for the week and exclusive of wages earned at overtime rates as such rates are defined.
- (d) The total computed earnings shall include commissions, bonuses and all compensation paid by the employer, except overtime pay.

12:57-3.6 Waiting time

Time during regular working hours and at other periods when employees are required to wait on the premises and no work is provided by the employer shall be counted as working time and paid at such employee's regular hourly wage.

12:57-3.7 Travel Time

An employee who is required or authorized to travel from one establishment to another shall be compensated for the travel time at the same rate as for working time and shall be reimbursed for travel expense.

12:57-3.8 Piece work

- (a) Minors employed on a piece work or commission basis shall be employed at rates which yield to each employee not less than the minimum wage established for time workers.
- (b) For any week during which a minor is employed in a piece work or commission basis, or any basis whatsoever other than an hourly or time basis, the minimum amount of wage that shall be paid to such employee for such work shall be not less than the amount the employer would be required to pay if such employee were employed on an hourly or time basis.
- (c) In the case of commissioned employees, their minimum wage may be charged against the commissions earned.

12:57-3.9 Employment under existing minimum wage orders

Whenever an employee is employed in any week solely in occupations governed by another minimum wage order, such employee may, for such week, be paid not less than the minimum rates required by such other minimum wage order.

12:57-3.10 Diversified employment

- (a) "Diversified employment" means employment of an employee by one employer in mercantile occupations and during the same time being employed in occupations either covered or not covered by other minimum wage orders.
- (b) An employee who during any payroll period works at diversified employment shall be paid for the full payroll period at the highest minimum wage rate established by any minimum wage order for any occupation in which the employee was engaged during the pay period in question; provided, however, that in cases where the employer has kept an accurate record of the actual time the employee has been engaged in each covered occupation, the employee may be paid not less than the minimum wage earned at such occupation.

12:57-3.11 Handicapped

No minor whose earning capacity has been impaired shall be paid at less than the minimum wage until a special license, in accordance with the provisions of N.J.S.A. 34:11-48, has been obtained by the employer from the Division of Wage and Hour Compliance.

12:57-3.12 Records

- (a) Every employer shall keep a record of the name and address of each such employee, together with a record of the ages of all minors, a true and accurate record of the amount paid each pay period to each minor, and such other records as are essential in determining an employee's regular hourly wage and the amount of overtime wages earned.
- (b) Employers are required to keep a true and accurate record of the hours worked each day. These records shall include the actual starting and stopping time of each work period and the total hours worked each pay period by each minor.

12:57-3.13 Posting

A notice issued by the Division of Wage and Hour Compliance setting forth the provisions of this subchapter shall be posted in a conspicuous place in every room where minors are employed at mercantile occupations.

12:57-1.2 Penalties for Violation

Any employer who violates any provisions of this order shall be guilty of a disorderly persons offense and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000.

As an alternative to or in addition to any other sanctions provided by law for violations the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation.

The employer shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner.

