

N.J.A.C. 12:71

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 54 No. 16, August 15, 2022

NJ - New Jersey Administrative Code > TITLE 12. LABOR AND WORKFORCE DEVELOPMENT > CHAPTER 71. NEW JERSEY CALL CENTER JOBS ACT RULES

Title 12, Chapter 71 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

N.J.S.A. 34:1A-3.e and 34:21-15.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2021, d.030, effective April 5, 2021.

See: 52 N.J.R. 1661(a), 53 N.J.R. 534(a).

CHAPTER HISTORICAL NOTE:

Chapter 71, New Jersey Call Center Jobs Act Rules, was adopted as new rules by R.2021, d.030, effective April 5, 2021. See: Source and Effective Date.

NEW JERSEY ADMINISTRATIVE CODE

Copyright © 2022 by the New Jersey Office of Administrative Law

N.J.A.C. 12:71-1.1

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 54 No. 16, August 15, 2022

NJ - New Jersey Administrative Code > TITLE 12. LABOR AND WORKFORCE DEVELOPMENT > CHAPTER 71. NEW JERSEY CALL CENTER JOBS ACT RULES > SUBCHAPTER 1. GENERAL PROVISIONS

§ 12:71-1.1 Purpose and scope

(a) The purpose of this chapter is to effectuate P.L. 2019, c. 470, known as the New Jersey Call Center Jobs Act.

(b) This chapter shall apply to each employer with a call center in New Jersey.

End of Document

N.J.A.C. 12:71-1.2

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 54 No. 16, August 15, 2022

NJ - New Jersey Administrative Code > TITLE 12. LABOR AND WORKFORCE DEVELOPMENT > CHAPTER 71. NEW JERSEY CALL CENTER JOBS ACT RULES > SUBCHAPTER 1. GENERAL PROVISIONS

§ 12:71-1.2 Definitions

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

"Act" means P.L. 2019, c. 470 (N.J.S.A. 34:21-8 through 15).

"Call center" means a facility or other operation whereby workers receive telephone calls or emails or other electronic communication for the purpose of providing customer assistance or other services. A call center operation means a physical operation or shared work location.

"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.

"Employee" means "employee," as that term is defined at N.J.S.A. 34:11-4.1.

"Employer" means any business entity that, for the purpose of staffing a call center, employs 50 or more full-time employees in New Jersey for each working day during each of 20 or more calendar workweeks in the then-current, or immediately preceding, calendar year, or that for the purpose of staffing a call center, employs 50 or more employees in New Jersey for each working day during each of 20 or more calendar workweeks in the then-current, or immediately preceding, calendar year, who in the aggregate (that is, who collectively) work at least 1,500 hours, excluding overtime hours, in each such workweek. The 50-employee count for the purpose of defining "employer" does not include an individual who is employed principally for a purpose other than the staffing of a call center (for example, someone who works in the employer's accounting or human resources offices) and who has, during a period of unanticipated high customer volume of telephone calls, emails, or other electronic communication, been assigned for a limited duration to assist with call center functions.

"Full-time" means working an average of 30 or more hours per week.

N.J.A.C. 12:71-1.3

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 54 No. 16, August 15, 2022

NJ - New Jersey Administrative Code > TITLE 12. LABOR AND WORKFORCE DEVELOPMENT > CHAPTER 71. NEW JERSEY CALL CENTER JOBS ACT RULES > SUBCHAPTER 1. GENERAL PROVISIONS

§ 12:71-1.3 Independent contractor status

The criteria identified in the Unemployment Compensation Law at N.J.S.A. 43:21-19(i)(6)(A), (B), and (C), commonly referred to as the "ABC test," and the case law interpreting and applying the ABC test to potential employment relationships shall be used to determine whether an individual is an employee or an independent contractor under the Act and this chapter.

End of Document

N.J.A.C. 12:71-2.1

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 54 No. 16, August 15, 2022

NJ - New Jersey Administrative Code > TITLE 12. LABOR AND WORKFORCE DEVELOPMENT > CHAPTER 71. NEW JERSEY CALL CENTER JOBS ACT RULES > SUBCHAPTER 2. CALL CENTER STAFFING; RELOCATION OR TRANSFER; NOTIFICATION

§ 12:71-2.1 Maintenance of call center staffing level

(a) Each employer with a call center in New Jersey must maintain a staffing level capable of handling no less than 65 percent of customer volume of telephone calls, emails, or other electronic communications originating in New Jersey or an account with a service address in New Jersey, when measured against the previous six-month average volume of those operations.

(b) The following method shall be used to determine compliance with the requirement at (a) above:

1. First, calculate the average monthly staffing level (in hours worked) necessary to handle 100 percent of customer volume of telephone calls, emails, or other electronic communications originating in New Jersey or an account with a service address in New Jersey over the immediately preceding six-month period, by doing the following:
 - i. Tabulate the total hours worked for each of the six months during the six-month period;
 - ii. Array each of the six monthly hours worked totals from lowest to highest;
 - iii. Discard the highest number and the lowest number; and
 - iv. Add the remaining monthly hours worked totals together and divide the sum by four.
2. Second, multiply 0.65 by the number arrived at in (b)1iv above, and round the resulting number to the nearest integer.
3. The number arrived at in (b)2 above is the minimum average monthly staffing level (in hours worked) that the employer must maintain during the then-current six-month period.
 - i. The "then-current six-month period" is not a rolling six-month period; the measurement against the immediately preceding six-month period does not occur on a monthly basis, but rather, occurs semiannually.
 - ii. For an employer that qualifies as of the July 1, 2020, effective date of the Act as an "employer" with a call center in New Jersey, the first measurement under the Act and this chapter will be of the average monthly staffing level during the six-month period from July 1, 2020 to December 31, 2020, against the average monthly staffing level during the immediately preceding six-month period from January 1, 2020 to June 30, 2020.
 - iii. For an employer that qualifies as an "employer" with a call center in New Jersey after the July 1, 2020, effective date of the Act, the first measurement under the Act and this chapter will be of the average monthly staffing level during the six-month period beginning on the first day of the month in which the employer qualifies as an "employer" with a call center in New Jersey (due either to the start of its business or having for the first time exceeded the employee threshold for "employer"), against the average monthly staffing level during the immediately preceding six-month period.

N.J.A.C. 12:71-2.1

iv. The average staffing level during the then-current six-month period will be calculated in the manner set forth at (b)1i, ii, iii, and iv above.

End of Document

N.J.A.C. 12:71-2.2

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 54 No. 16, August 15, 2022

NJ - New Jersey Administrative Code > TITLE 12. LABOR AND WORKFORCE DEVELOPMENT > CHAPTER 71. NEW JERSEY CALL CENTER JOBS ACT RULES > SUBCHAPTER 2. CALL CENTER STAFFING; RELOCATION OR TRANSFER; NOTIFICATION

§ 12:71-2.2 Notification

(a) When the staffing level of a call center falls below the amount required at N.J.A.C. 12:71-2.1, the employer shall, before the close of business on the fifth business day following the then-current six-month period, provide notice to the Commissioner using the form made available to employers on the Department's website.

(b) Any employer that relocates a call center or transfers one or more facilities or operating units comprising at least 20 percent of a call center's total operating volume of telephone calls, emails, or other electronic communications when measured against the previous 12-month average volume of those operations, from New Jersey to one or more foreign countries shall notify the Commissioner at least 90 days prior to the relocation or transfer of operations using the form made available to employers on the Department's website.

N.J.A.C. 12:71-3.1

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 54 No. 16, August 15, 2022

NJ - New Jersey Administrative Code > TITLE 12. LABOR AND WORKFORCE DEVELOPMENT > CHAPTER 71. NEW JERSEY CALL CENTER JOBS ACT RULES > SUBCHAPTER 3. VIOLATIONS; PENALTIES

§ 12:71-3.1 Administrative penalties

- (a) When the Commissioner finds that an employer has violated the notification requirements set forth at N.J.A.C. 12:71-2.2, the Commissioner is authorized to assess and collect administrative penalties in an amount not to exceed \$ 7,500 for each day the employer fails to provide the notification.
- (b) No administrative penalty shall be levied under this subchapter, unless the Commissioner provides the alleged violator with notification of the violation and the amount of the penalty and an opportunity to request a formal hearing pursuant to N.J.A.C. 12:71-5.1.
- (c) All penalties shall be paid within 30 days of the date of the final order. Failure to pay such penalties shall result in a judgment being obtained in a court of competent jurisdiction.
- (d) All payments shall be made to the "Commissioner of Labor and Workforce Development." All payments shall be made by certified check or money order, or payable in a form suitable to the Commissioner.
- (e) In assessing an administrative penalty under this subchapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violation.
1. The seriousness of the violation;
 2. The past history of previous violations by the employer;
 3. The good faith of the employer;
 4. The size of the employer's business; and
 5. Any other factors that the Commissioner deems to be appropriate in determining the penalty assessed.

N.J.A.C. 12:71-4.1

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 54 No. 16, August 15, 2022

NJ - New Jersey Administrative Code > TITLE 12. LABOR AND WORKFORCE DEVELOPMENT > CHAPTER 71. NEW JERSEY CALL CENTER JOBS ACT RULES > SUBCHAPTER 4. LIST OF EMPLOYERS PROVIDING NOTIFICATION

§ 12:71-4.1 List of employers providing notification

- (a) The Commissioner shall compile and maintain a list and shall update that list on a monthly basis, of all employers that provide notification pursuant to N.J.A.C. 12:71-2.2 and of those employers who, following investigation by the Department, are determined to have violated the notification requirement under the Act (that is, the employer should have, but did not, provide the required notification).
- (b) An employer who is placed on the list at (a) above shall remain on that list for a period of time determined to be appropriate by the Commissioner, not to exceed 36 months.
- (c) In determining the appropriate period of time that the employer will remain on the list, the Commissioner shall consider the following factors, where applicable.
1. Whether the employer voluntarily provided the required notification, versus having been determined, following an investigation, to have violated the notification requirement;
 2. The past history of previous violations by the employer;
 3. The good faith of the employer; and
 4. Any other factors that the Commissioner deems to be appropriate in determining the sanction imposed.
- (d) No employer shall be placed on the list at (a) above, unless the Commissioner provides the employer with notification of intent to place the employer on the list, the period of time that the Commissioner intends to maintain the employer's name on the list, and an opportunity to request a formal hearing pursuant to N.J.A.C. 12:71-5.1.
- (e) The Commissioner shall make the list of employers at (a) above available to the public and prominently display a link to the list on the Department's website.

N.J.A.C. 12:71-4.2

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 54 No. 16, August 15, 2022

NJ - New Jersey Administrative Code > TITLE 12. LABOR AND WORKFORCE DEVELOPMENT > CHAPTER 71. NEW JERSEY CALL CENTER JOBS ACT RULES > SUBCHAPTER 4. LIST OF EMPLOYERS PROVIDING NOTIFICATION

§ 12:71-4.2 Ineligibility to receive financial assistance from the State

(a) An employer who is included on the list at N.J.A.C. 12:71-4.1 shall be ineligible to receive any direct or indirect State grant, guaranteed loan, tax benefit, or any other financial support for the period of time that the employer is on the list, except that the employer's inclusion on the list shall not prevent the employer from receiving any grant to provide training or other employment assistance to individuals who are members of specific groups selected as being in particular need of training or other employment assistance, including, but not limited to, employees of the employer whose employment is being affected due to the transfer or relocation of the employer's facility or operating unit, veterans, minority groups, and women.

(b) For the purpose of this section, the term "tax benefit" shall mean a tax advantage awarded by a State governmental entity that has the effect of reducing a taxpayer's liability under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or 54:10A-5.

N.J.A.C. 12:71-5.1

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 54 No. 16, August 15, 2022

NJ - New Jersey Administrative Code > TITLE 12. LABOR AND WORKFORCE DEVELOPMENT > CHAPTER 71. NEW JERSEY CALL CENTER JOBS ACT RULES > SUBCHAPTER 5. APPEALS

§ 12:71-5.1 Appeals

(a) Whenever the Department shall find cause to place an employer on the list pursuant to N.J.A.C. 12:71-4.1, or to impose an administrative penalty pursuant to N.J.A.C. 12:71-3.1, it shall notify the employer in writing of the reason for the action taken and provide the opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) All requests for hearing shall be filed within 10 business days from the date of receipt of the notice. The Commissioner, or his or her designee, shall issue the final decision in accordance with the applicable provisions of the Administrative Procedure Act and Uniform Administrative Procedure Rules.

1. All requests for a hearing shall be in writing and shall be directed to the following address:

NJ Department of Labor and Workforce Development

Division of Wage and Hour Compliance

PO Box 389

3rd Floor

Trenton, NJ 08625-0389

or

WageHour@dol.nj.gov

(c) In the absence of a timely request for a hearing, pursuant to (b) above, the determination of the Department shall be deemed the final administrative action in the given matter.

(d) All requests for a hearing shall be reviewed by the Division of Wage and Hour Compliance in order to determine whether the dispute can be resolved at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference shall be scheduled. If a settlement cannot be reached, the case shall be forwarded to the Office of Administrative law for a formal hearing.

N.J.A.C. 12:71-6.1

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 54 No. 16, August 15, 2022

NJ - New Jersey Administrative Code > TITLE 12. LABOR AND WORKFORCE DEVELOPMENT > CHAPTER 71. NEW JERSEY CALL CENTER JOBS ACT RULES > SUBCHAPTER 6. PREFERENCE FOR MAKING/AWARDING CONTRACT

§ 12:71-6.1 Preference for making/awarding contract

(a) In making or awarding any contract for call center services, where the call center services contracted for are not ancillary to the delivery of another service or good, a State department or agency making or awarding the contract shall give a preference to any qualified business submitting a proposal in response to the advertised solicitation or the request for quotes. For the purpose of evaluating "price and other factors," the preference given to a qualified business shall be one of the following:

1. An amount or price not to exceed 10 percent; or
2. A point allocation not to exceed 10 percent.

(b) For the purpose of this section, the term "qualified business" means a business that certifies, prior to the award of the contract, that it has a business location in New Jersey and employs at least two New Jersey residents.