



New Jersey's Minimum Wage Going Up to at Least \$15.00 to \$18.00

Revised July 2021

Overview

As a result of 2019 amendments to New Jersey's Wage and Hour Law,¹ New Jersey's minimum wage has been gradually increasing toward at least \$15 an hour. Subject to some exceptions and exemptions:

- As of January 1, 2024, employers with six or more employees ("large employers") must pay their employees a minimum hourly wage of at least \$15.00.

From January 1 to December 31, 2021, these employees must be paid at least \$12.00 an hour.

- As of January 1, 2026, (a) employers with fewer than six employees ("small employers") and (b) large and small seasonal employers must pay their employees a minimum hourly wage of at least \$15.00.

From January 1 to December 31, 2021, these employees must be paid at least \$11.10.

- As of January 1, 2027, agricultural employers of employees who are paid on a piece-rate or regular hourly rate basis to labor on a farm must pay their

¹ The 2019 amendments are set forth in Public Law 2019, Chapter 32, which is available at https://www.njleg.state.nj.us/2018/Bills/AL/19/32_PDF. As a result of the amendments, New Jersey's Wage and Hour Law, which had applied just to non-governmental employers, now also applies to "the State [of New Jersey] and any county, municipality, or school district in the State, or any agency, authority, department, bureau, or instrumentality thereof." N.J.S.A. 34:11-56a1(g); N.J.A.C. 12:56-2.1.

On August 3, 2020, the New Jersey Department of Labor and Workforce Development (NJDLWD) issued final revisions to its minimum wage regulations to reflect the changes to the minimum wage resulting from Public Law 2019, Chapter 32. See [https://www.nj.gov/labor/forms_pdfs/legal/2020/52N.J.R.1562\(a\).pdf](https://www.nj.gov/labor/forms_pdfs/legal/2020/52N.J.R.1562(a).pdf).

employees a minimum hourly wage of at least \$15.00 an hour.

From January 1 to December 31, 2021, these employees must be paid at least \$10.44 an hour.

The 2019 amendments permit all employers to pay a training wage to employees who are enrolled in certain training programs. The training wage must be at least 90% of the large employer minimum wage and can be paid only for the first 120 hours of work after hire.

In addition, as a result of another set of amendments to the Wage and Hour Law,² as of November 1, 2020, “long-term care facility direct care staff members”³ are to receive a minimum wage that is \$3.00 higher than New Jersey’s then-current minimum wage for large employers. **The following discussion does not include the \$3.00 differential.**

Employers are not required to pay the minimum wage to certain categories of workers. These exceptions, which are set forth in the **appendix to this article**, were not changed by the amendments to the Wage and Hour Law discussed in this article.

Minimum Wage Increase for Employees of Large Employers

Except as discussed below, the minimum wage for employees of employers with six or more employees will be as follows:

² The 2020 amendments are set forth in Public Law 2020, Chapter 89, which is available at <https://www.njleg.state.nj.us/2020/Bills/PL20/89 .PDF>. On February 1, 2021, the NJDLWD proposed revisions to its minimum wage regulations to reflect the changes to the minimum wage resulting from Public Law 2020, Chapter 89. See [https://www.nj.gov/labor/forms_pdfs/legal/2021/NJAC_12_56_\(amendments_min_wage_LTC\)_notice_of_proposal\).pdf](https://www.nj.gov/labor/forms_pdfs/legal/2021/NJAC_12_56_(amendments_min_wage_LTC)_notice_of_proposal).pdf). Once released, the final revisions likely will be posted at <https://www.nj.gov/labor/roles/legal/adoption/2021RuleAdoptions.html> or <https://www.nj.gov/labor/roles/legal/adoption/2022RuleAdoptions.html>.

³ A “long-term care facility direct care staff member” is “any health care professional licensed or certified pursuant to Title 26 or Title 45 of [New Jersey law] who is employed by a long-term care facility and who provides personal care, assistance, or treatment services directly to residents of the facility in the course of the professional’s regular duties.” N.J.S.A. 34:11-56a1(q); proposed N.J.A.C. 12:56-2.1 (NJDLWD’s proposed definition as of Feb. 1, 2021 is identical to the definition in the 2020 law).

In its [proposed regulations](#), the NJDLWD defines “long-term care facility” as “a ‘long-term care facility’ as that term is defined at N.J.S.A. 26:2H-12.87.” Proposed N.J.A.C. 12:56-2.1 (as of Feb. 1, 2021). N.J.S.A. 26:2H-12.87 defines “long-term care facility” as “a nursing home, assisted living residence, comprehensive personal care home, residential health care facility, or dementia care home licensed pursuant to [the Health Care Facilities Planning Act (Public Law 1971, c. 136 (N.J.S.A. 26:2H-1 et seq.))].”

- As of January 1, 2021: \$12.00
- As of January 1, 2022: at least \$13.00
- As of January 1, 2023: at least \$14.00
- As of January 1, 2024: at least \$15.00
- As of January 1, 2025: the 2024 minimum wage plus any required increase due to an increase in the consumer price index (CPI)⁴
- As of January 1, 2026: the 2025 minimum wage plus any required increase due to an increase in the CPI
- As of January 1, 2027: the 2026 minimum wage plus any required increase due to an increase in the CPI
- As of January 1, 2028: the 2027 minimum wage plus any required increase due to an increase in the CPI

Minimum Wage Increase for Employees of Small Employers and for Employees Who Are Engaged in Seasonal Employment

Except as discussed below, the minimum wage for employees of (1) employers with fewer than six employees (“small employers”)⁵ and (2) large and small employers

⁴ The applicable CPI is the CPI for all urban wage earners and clerical workers (CPI-W, U.S. City Average) as calculated by the federal government for the 12 months prior to the September 30 preceding January 1. N.J.A.C. 12:56-3.1(b)-(c), 12:56-3.2(b)-(e), and 12:56-3.3(b)-(g). See U.S. Bureau of Labor Statistics, *Consumer Price Indexes Overview*, at <https://www.bls.gov/cpi/overview.htm>.

⁵ A “small employer” is defined as:

[A]ny employer who employed less than six employees for every working day during each of a majority of the calendar workweeks in the current calendar year and less than six employees for every working day during not less than 48 calendar workweeks in the preceding calendar year, except that, if the employer was newly established during the preceding calendar year, the employer shall be regarded as a “small employer” if the employer employed less than six employees for every working day during all of the weeks of that year, and during a majority of the calendar workweeks in the current calendar year, and, if the employer is newly established during the current calendar year, the employer shall be regarded as a “small employer” if the employer employed less than six employees for every working day during a majority of the calendar workweeks in the current calendar year.

N.J.S.A. 34:11-56a1(p); N.J.A.C. 12:56-2.1.

engaged in “seasonal employment”⁶ will be as follows:

In its regulations pertaining to the gradual increase in the minimum wage, the NJDLWD did not address whether an employer would need to retroactively pay the higher minimum wage during the current calendar year if during that year the employer reaches the point at which it no longer qualifies as a “small employer.” For example, an employer that has been in business for four years exceeds the six-employee headcount for the first time ever as of May 1 of the current year and remains over that number for the balance of the current year. Are the employees entitled to the large employer minimum wage retroactively back to January 1 of the current year?

In view of the underlying purpose of the small employer minimum wage, it would seem that the New Jersey legislature would not have wanted to impose such a burdensome retroactive obligation on a theretofore small employer.

The regulations also don’t discuss what it means to have six employees “for every working day” during a calendar workweek.

Under the federal Family and Medical Leave Act (FMLA), which applies to employers with 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year, the regulations of the U.S. Department of Labor (USDOL) provide that “[a]ny employee whose name appears on the employer’s payroll will be considered employed each working day of the calendar week, and must be counted whether or not any compensation is received for the week.” 29 C.F.R. §825.105(b) (“Counting employees for determining coverage”), at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title29/29cfr825_main_02.tpl. However, the same regulation provides that “[i]f there is no employer/employee relationship (as when an employee is laid off, whether temporarily or permanently) such individual is not counted” and that “[a]n employee who does not begin to work for an employer until after the first working day of a calendar week, or who terminates employment before the last working day of a calendar week, is not considered employed on each working day of that calendar week.” 29 C.F.R. §825.105(c)-(d). It is possible that the NJDLWD might follow a similar payroll standard for purposes of determining whether an employer is a “small employer.”

The current and pending proposed revised regulations of the New Jersey Division on Civil Rights do not address this issue under the New Jersey Family Leave Act. See <http://www.nj.gov/oag/dcr/downloads/FamilyLeaveAct-Regulations.pdf> (2014 regulations) and <https://www.njoag.gov/wp-content/uploads/2021/03/PRN-2021-021-53-N.J.R.-352a.pdf> (Mar. 1, 2021 proposed regulations).

⁶ “Seasonal employment” is defined as:

[(1)] [E]mployment during a year by an employer that is a seasonal employer, or [(2)] employment by a non-profit or government entity of an individual who is not employed by that employer outside of the period of that year commencing on May 1 and ending September 30, or [(3)] employment by a governmental entity in a recreational program or service during the period commencing on May 1 and ending September 30, except that “seasonal employment” does not include employment of employees engaged to labor on a farm on either a piece-rate or regular hourly rate basis.

- As of January 1, 2021: \$11.10
- As of January 1, 2022: at least \$11.90
- As of January 1, 2023: at least \$12.70
- As of January 1, 2024: at least \$13.50
- As of January 1, 2025: at least \$14.30
- As of January 1, 2026: at least \$15.00
- As of January 1, 2027, the 2026 minimum wage plus (1) any required increase due to an increase in the CPI that employees of large employers receive and (2) one half of the difference between \$15.00 and the minimum wage in effect in 2026 for employees of large employers
- As of January 1, 2028, the 2027 minimum wage plus (1) any required increase due to an increase in the CPI that employees of large employers receive and (2) one half of the difference between \$15.00 and the minimum wage in effect in 2026 for employees of large employers, which should then result in all employees (except for certain agricultural employees discussed below) receiving the same minimum wage in 2028

Special Rules for Employees Who Customarily and Regularly Receive Gratuities or Tips

The 2019 law and the NJDLWD’s regulations provide new protections for employees who receive tips. Employers can elect to take a tip credit against the hourly wage of tipped employees only if (1) those employees are engaged in an occupation in which

N.J.S.A. 34:11-56a1(n); N.J.A.C. 12:56-2.1.

“Seasonal employer” is defined as:

[(1)] [A]n employer who exclusively provides its services in a continuous period of not more than ten weeks during the months of June, July, August, and September, or [(2)] an employer for which, during the immediately previous calendar year, not less than two thirds of the employer’s gross receipts were received in a continuous period of not more than sixteen weeks or for which not less than 75 percent of the wages paid by the employer during the immediately preceding year were paid for work performed during a single calendar quarter.

N.J.S.A. 34:11-56a1(o); accord N.J.A.C. 12:56-2.1.

they customarily and regularly receive more than \$30.00 a month in tips and, in the case of small, seasonal, and agricultural employers, (2) the employers are willing to be subject to the large employer minimum wage.⁷ The amount of the credit is scheduled to increase in certain years, until it reaches \$9.87 per hour in 2024.⁸

Special Rules for Agricultural Employees

Employees who are paid on a piece-rate or regular hourly rate basis to labor on a farm are subject to a minimum wage increase schedule that is less favorable than the two schedules shown above. Their minimum wage potentially could equal the minimum wage paid to all other New Jersey employees on January 1, 2030.

Minimum Wage Chart

The New Jersey Department of Labor and Workforce Development (NJDLWD) has summarized the changes in the minimum hourly wage in the following chart:⁹

Date	Large Employers	Small & Seasonal Employers	Agricultural Employers	Required Cash Wage for Employees Who Receive Tips or Gratuities*
January 1, 2019	\$8.85	\$8.85	\$8.85	\$2.13
July 1, 2019	\$10.00	\$8.85	\$8.85	\$2.63
January 1, 2020	\$11.00	\$10.30	\$10.30	\$3.13
January 1, 2021	\$12.00	\$11.10	\$10.44	\$4.13
January 1, 2022	\$13.00	\$11.90	\$10.90	\$5.13
January 1, 2023	\$14.00	\$12.70	\$11.70	\$5.13
January 1, 2024	\$15.00	\$13.50	\$12.50	\$5.13
January 1, 2025	TBD**	\$14.30	\$13.40	TBD

⁷ N.J.S.A. 34:11-56a4(e); N.J.A.C. 12:56-3.5(a)-(c).

⁸ The NJDLWD’s regulations include a detailed explanation of the rules applicable to tipped employees. See N.J.A.C. 12:56-3.5; NJDLWD, *Tipped Workers in NJ: Rights and Protections* and *Tipped Employees in New Jersey: Know Your Rights* (available in several languages), both at <https://www.nj.gov/labor/worker-protections/myworkrights/tippedworkers.shtml>.

⁹ The chart and accompanying footnote are adapted from https://www.nj.gov/labor/forms_pdfs/wagehour/mw-571.pdf or <https://www.nj.gov/labor/wageandhour/assets/PDFs/Forms%20and%20Publications/mw-571.pdf>.

January 1, 2026	TBD	\$15.00	\$14.20	TBD
January 1, 2027	TBD	TBD	\$15.00	TBD

* When an employer takes a tip credit, a tipped employee’s cash wage plus tips and/or gratuities must equal the large employer minimum wage, even if the employee is employed by a small, seasonal, or agricultural employer.

** “TBD” means “to be determined.”

The Minimum Wage Potentially Could Be Higher

The minimum wage for employees could be higher if one or more of the following occur:

1. The New Jersey Constitution requires that New Jersey’s minimum wage be increased each year if the CPI increased during a previous one-year period.¹⁰ If an increase required by the Constitution exceeds a scheduled increase for the same year, or if there is no scheduled increase for the same year, then the minimum wage would increase by the amount required by the Constitution.¹¹
2. The federal minimum wage, which has been \$7.25 since 2009, is increased to an amount that exceeds the applicable New Jersey minimum wage then in effect. In that case, the federal minimum wage would become New Jersey’s minimum wage until it is exceeded by the greater of (a) the applicable dollar amount set forth in the chart above and (b) the amount required by the Constitution.

¹⁰ Section 23 of Article I of the [New Jersey Constitution](#) provides in relevant part:

Every employer shall ... pay each [New Jersey] employee ... a wage rate of not less than the rate required by [the New Jersey State Wage and Hour Law] [O]n September 30 of each ... year, the State minimum wage rate shall be increased, effective the following January 1, by any increase during the one year prior to that September 30 in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government. If, at any time, the federal minimum hourly wage rate set by ... the federal "Fair Labor Standards Act of 1938" ... is raised to a level higher than the State minimum wage rate, then the State minimum wage rate shall be increased to the level of the federal minimum wage rate and all subsequent increases based on increases in the CPI-W pursuant to this paragraph shall be applied to the State minimum wage rate as increased to match the federal minimum wage rate.

¹¹ This scenario actually occurred already with respect to the 2021 minimum wage for farm employees. The 2019 law set the 2020 minimum wage for farm employees at \$10.30, with no scheduled increase for 2021. Because the cost of living increased, the 2021 minimum wage for farm employees increased to \$10.44.

3. A political subdivision of the State of New Jersey by ordinance, resolution, regulation, or agreement requires a higher minimum wage for:

a. its vendors, contractors, and subcontractors;¹² or

¹² See N.J.S.A. 34:11-56a4(h). Some political subdivisions have enacted one or more living wage or prevailing wage ordinances. For example:

- In May 2019, the Hudson County Board of Chosen Freeholders (now known as the Board of County Commissioners) approved Ordinance No. 289-5-2019, which prospectively superseded Ordinance No. 364-6-2014. The ordinance requires contractors that provide service workers to the county to pay a “living wage” to the contractors’ employees who are providing those services. The ordinance sets forth a base hourly living wage that increases each year until 2024.

For the period July 1, 2020 to June 30, 2021, the base hourly living wage is the greater of \$15.29 and 150% of the federal minimum wage at the time the contract is bid or renewed or proposals are received. The \$15.29 amount increases by a dollar a year until it reaches \$19.29 for the period July 1, 2024 to June 30, 2025. In addition, if a contractor does not provide at least five paid vacation days and/or medical benefits that satisfy certain criteria, then the contractor must pay its employees an hourly stipend of up to 22% of the base hourly living wage.

- In June 2014, Hudson County Board of Chosen Freeholders approved Ordinances Nos. 363-6-2014 (“County Contractor Standard Compensation Provisions”) and 365-6-2014 (“Economic Development Financial Assistance Standard Compensation Provisions”), which require contractors that provide workers to perform “building service work” (e.g., a guard or a building or window cleaner) for the county to pay a “living wage” to the contractors’ employees who are providing those services. The ordinance sets forth a base hourly living wage that is the greater of:
 1. 150% of the federal minimum, except that in the case of armed guards, the hourly wage rate established by the USDOL for the Guard II classification;
 2. The hourly wage rate for work performed within Hudson County under the collective bargaining agreement (CBA) covering the largest number of hourly nonsupervisory employed within the county in the relevant classification, provided the CBA covers at least 200 employees in the classification; and
 3. The hourly wage rate paid to workers in the relevant classification under a preceding qualified contract.

In addition, a contractor must provide paid-time-off days, medical benefits, and/or alternative benefits and/or payments that satisfy certain criteria set forth in the ordinance.

- In July 2012, the Jersey City Council approved Ordinance 12-090 (https://library.municode.com/nj/jersey_city/ordinances/code_of_ordinances?nodeId=550)

b. its own employees.¹³

4. New Jersey¹⁴ or the federal¹⁵ government mandates a higher minimum wage for

[412](#)), which requires certain contractors providing services to the city to pay a living wage and other benefits to certain of the contractors' employees who are providing those services. The ordinance is codified in the Jersey City Municipal Code, § 3-51(G), at https://library.municode.com/nj/jersey_city/codes/code_of_ordinances?nodeId=CH3ADG_O_ARTVIDEAD_S3-51PUDIPUCESE.

¹³ See N.J.S.A. 40:69A-43a. For example:

- In October 2018, the Hudson County Executive issued an executive order setting the minimum wage for certain county employees at \$15.00 an hour. See Hudson County, NJ *Executive Order No. TAD-76* (Oct. 19, 2018), at <http://www.hudsoncountynj.org/wp-content/uploads/2018/10/TAD-76.pdf>.
- In July 2016, the mayor of Jersey City issued an executive order setting the minimum wage for certain municipal employees at \$15.00 an hour. See Jersey City, NJ, *Executive Order No. 2016-008* (July 5, 2016), at <https://www.jerseycitynj.gov/CityHall/MayorFulop/executiveorders> and https://jerseycitynj.gov/UserFiles/Servers/Server_6189660/File/City%20Hall/Mayors%20Office/Mayoral%20Executive%20Orders/Executive%20Order%202016-008.pdf.

¹⁴ For example, On April 29, 2021, Governor Murphy signed into law the [Healthy Terminals Act](#) (Public Law 2021, Chapter 68), which requires as of September 1, 2021, that certain airport and train station workers be paid certain wage rates and benefits under the New Jersey Prevailing Wage Act. See ROI-NJ, *Healthy Terminals Act: Murphy Expands Benefits for Airport Workers*, at <https://www.roi-nj.com/2021/04/30/industry/healthy-terminals-act-murphy-expands-benefits-for-airport-workers>.

As explained in the first section of this article, certain long-term care facility direct care staff members who are employed by a long-term care facility are entitled to receive a minimum wage that is \$3.00 higher than New Jersey's then-current minimum wage for large employers.

¹⁵ For example, in 2014, President Obama signed Executive Order 13658, [Establishing a Minimum Wage for Contractors](#), to raise the minimum wage to \$10.10 for all workers on federal construction and service contracts. The amount has been adjusted periodically to reflect inflation. See USDOL, *Executive Order 13658, Establishing a Minimum Wage for Contractors: Annual Update*, at <https://www.dol.gov/agencies/whd/government-contracts/minimum-wage>.

On April 27, 2021, President Biden signed Executive Order 14026, [Increasing the Minimum Wage for Federal Contractors](#), which will increase the minimum wage for employees of certain federal contractors to \$15.00 on January 30, 2022, and supersedes President Obama's executive order to the extent it is inconsistent with this new executive order. See Fisher Phillips, *Federal Contractor Employees to See Minimum Wage Increase to \$15* (Apr. 28, 2021), at <https://www.fisherphillips.com/news-insights/federal-contractor-employees-minimum-wage-increase-dollar15.html>.

certain classes of employees.

New Training Minimum Wage Established

An employer is permitted to pay a “training wage,” which must be at least 90% of the large employer minimum wage, to an employee who is enrolled in an “established employer on-the-job or other training program”¹⁶ that meets the standards established by the NJDLWD. The training wage can be paid for no more than the first 120 hours of work after hiring the employee in an occupation in which the employee has no previous similar or related experience.

The employer (1) must not hire the employee at the training wage unless there is a reasonable expectation that there will be regular employment at or above the effective minimum wage for the trainee upon the successful completion of the period of the training wage and (2) must make a good faith effort to continue to employ the employee after the period of the training wage expires.¹⁷

¹⁶ The regulations define "established employer on-the-job or other training program" as “an existing on-the-job or other training program that, when completed by the employee, either results in the employee earning an industry-valued credential or results in the employee being awarded credit that may be directly applied toward the earning of an industry-valued credential.” N.J.A.C. 12:56-2.1.

¹⁷ The 2019 law sets the following minimum requirements that an employer must meet in order to pay a training wage:

- “[A] training wage of not less than 90 percent of the minimum wage rate [required to be paid by large employers] may be paid to an employee who is enrolled in an established employer on-the-job or other training program which meets standards set by regulations adopted by the [NJDLWD].
- The period during which an employer may pay the training wage to the employee shall be the first 120 hours of work after hiring the employee in employment in an occupation in which the employee has no previous similar or related experience.
- An employer shall not utilize any employee paid the training wage in a manner which causes, induces, encourages or assists any displacement or partial displacement of any currently employed worker, including any previous recipient of the training wage, by reducing hours of a currently employed worker, replacing a current or laid off employee with a trainee, or by relocating operations resulting in a loss of employment at a previous workplace, or in a manner which replaces, supplants, competes with or duplicates any approved apprenticeship program.
- An employer who pays an employee a training wage shall make a good faith effort to continue to employ the employee after the period of the training wage expires and shall not hire the employee at the training wage unless there is a reasonable expectation that there will be regular employment, paying at or above the effective minimum wage, for the trainee upon the successful completion of the period of the training wage.

Note that, pursuant to the NJDLWD's regulations, the "training wage" is not applicable to workers who are engaged to labor on a farm.¹⁸

New Tax Credits Established for Employers of Employees with Impairments

The 2019 law created new tax credits under New Jersey's corporation business tax (CBT) and New Jersey's gross income tax (GIT) for employers (including nonprofits) of "employees with impairments."¹⁹ The intent of the new law is to provide tax credits to these employers in order to help offset the increased costs they incur due to (1) the wage increases for these employees caused by the new law and (2) the corresponding increases in payroll taxes on the extra wages.²⁰

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- If the [NJDLWD] determines that an employer has made repeated, knowing violations of the provisions of this subsection regarding the payment of a training wage, the [NJDLWD] shall suspend the employer's right to pay a training wage for a period set pursuant to regulations adopted by the [NJDLWD], but not less than three years."

N.J.S.A. 34:11-56a4(g) (bullet points added); accord N.J.A.C. 12:56-3.4(a)-(c).

¹⁸ This is because the NJDLWD's regulations relating to larger employers (N.J.A.C. 12:56-3.1(a)) and small/seasonal employers (N.J.A.C. 12:56-3.2(a)), but not the regulation relating to labor on a farm (N.J.A.C. 12:56-3.3(a)) expressly cross-reference the "training wage" provision set forth in N.J.A.C. 12:56-3.4.

¹⁹ N.J.S.A. 34:11-56a39 to 40; N.J.S.A. 54:10A-5.42 (CBT tax credit); N.J.S.A. 54A:4-18 (GIT tax credit).

"Employee with an impairment" is defined as:

[A]n employee earning at least the minimum wage on [February 4, 2019 (see chart above)] whose work capacity is significantly impaired by age or physical or mental deficiency or injury and who, based on a determination by the State, is found eligible for personal assistance services or prescribed drugs because without such services or drugs the individual would be unable to perform the essential functions of the employment position that the individual holds.

N.J.S.A. 34:11-56a39.

²⁰ N.J.S.A. 34:11-56a40(a). The tax credits will not be available after 2024 for employers subject to the large employer minimum wage and after 2027 for other employers. N.J.S.A. 34:11-56a40(b)-(c).

The NJDLWD has posted a press release²¹ and an *Application for Certification*²² that eligible employers must complete in order to be awarded tax credits. The New Jersey Division of Taxation has posted its form for claiming the CBT tax credit.²³

Because nonprofits normally are exempt from paying New Jersey's CBT,²⁴ a CBT tax credit has no monetary significance to nonprofits. Nonprofits will apply their tax credits against the income taxes they withhold from their employees' wages.²⁵ There is no form on which this credit can be claimed directly by employers as an offset against withheld income taxes. Instead:

- The employer must submit the *Application for Certification* (see footnote 22) to the NJDLWD.

²¹ NJDLWD, *Murphy Administration Offers Tax Credits to Employers to Offset Minimum Wage Increases for Workers with Impairments* (Jan. 17, 2020), at https://www.nj.gov/labor/lwdhome/press/2019/20200117_taxcredits.shtml. See also NJ Spotlight News, *State Accepting Tax-Credit Applications from Companies Employing People with Disabilities* (Jan. 23, 2021), at <https://www.njspotlight.com/2020/01/state-accepting-tax-credit-applications-from-companies-employing-people-with-disabilities>.

²² NJDLWD, Form FS-432, *Application for Certification* under the Tax Credit Program for Employers of Employees with Impairments Impacted by Increase in Minimum Wage under P.L. 2019, c. 32 ([N.J.S.A.] 34:11-56a4.9 et seq.), at https://www.nj.gov/labor/assets/PDFs/FS432_1219_ApplicationforCert_taxcredit.pdf. The form includes the e-mail address for the person at the NJDLWD who can help employers with questions about the tax credit.

²³ See N.J. Division of Taxation, *Employers of Employees with Impairments Credit*, at <https://www.state.nj.us/treasury/taxation/impairments.shtml>; N.J. Division of Taxation, Form 328, *New Jersey Corporation Business Tax: Tax Credit for Employers of Employees With Impairments*, at <https://www.state.nj.us/treasury/taxation/pdf/current/cbt/328.pdf>.

As of the date of this article, the Division of Taxation and the New Jersey Division of Revenue and Enterprise Services have not issued a separate form for claiming the GIT tax credit. Instead, the credit is claimed by filing a letter with the Division of Taxation after the annual GIT return is filed. See the instructions set forth at N.J. Division of Taxation, *Employers of Employees with Impairments Credit*, at <https://www.state.nj.us/treasury/taxation/impairments.shtml>.

²⁴ See N.J. Division of Taxation, *Nonprofit Corporations*, at <https://www.state.nj.us/treasury/taxation/exemptcbt.shtml>, which states that if an "organization is properly incorporated as and operated as a nonprofit corporation, [it] is exempt from the New Jersey corporation business tax." This would include nonprofits that are incorporated under the New Jersey Nonprofit Corporation Act or any similar law of New Jersey or any other state and are not operated for pecuniary profit of any private shareholders or individuals. N.J.S.A. 54:10A-3(e).

²⁵ N.J.S.A. 34:11-56a40(e); N.J.S.A. 54A:4-18 (GIT tax credit); N.J.S.A. 54A:7-1.

- The Commissioner of Labor certifies the amount of the tax credit the employer is entitled to and provides the employer with a certificate.
- Similar to the GIT tax credit (see <https://www.state.nj.us/treasury/taxation/impairments.shtml>), the employer must submit the following two items by mail to the Division of Taxation in order for the Division to apply the credit internally to the employer's withholding account:²⁶
 - A cover letter requesting that the employer's Tax Credit for Employers of Employees with Impairments be applied against the *Employer's Withholding Account*.

Include the name of the employer contact, a daytime telephone number, and a current mailing address.
 - The certificate issued by the Commissioner of Labor.

Mail these documents to:

New Jersey Division of Taxation
Gross Income Tax Audit Branch
P.O. Box 288
Trenton, NJ 08695-0288
Attention: William G. Bittner, Chief

The employer should retain a copy of the cover letter and certificate.

Required New Jersey Wage and Hour Law Abstract

The NJDLWD periodically revises the *Wage and Hour Law Abstract* that employers are required to post to reflect the then current minimum wage. Revised versions are made available at <https://www.nj.gov/labor/wageandhour/tools-resources/forms-publications/employer-poster-packet/index.shtml>.

²⁶ See NJ Division of Taxation, *NJ Income Tax - Reporting and Remitting*, at <https://www.state.nj.us/treasury/taxation/njit31.shtml>; NJ Division of Revenue, *ON-Line GIT Instructions for NJ927 and NJ927W*, at https://www1.state.nj.us/TYTR_BusinessFilings/jsp/Giter/Help/HelpNJ927Return.jsp; NJ Division of Taxation, *New Jersey Income Tax Withholding Instructions* (Pub. NJ-WT), at <https://www.state.nj.us/treasury/taxation/pdf/current/njwt.pdf>.

Next Steps

Nonprofits should:

- Review the compensation of all employees, including employees who are exempt from overtime pay, to ensure that their wages will be increased in a timely manner if necessary due to the periodic increases in the minimum wage.

Nonprofits should evaluate whether any of the exceptions to the minimum wage set forth in the appendix to this article might be applicable to their organizations.

- Review the compensation of employees who are exempt from overtime pay to ensure that they are being paid the minimum weekly salary required to be paid to exempt employees.²⁷
- Review the compensation of all employees to ensure compliance with New Jersey's Diane B. Allen Equal Pay Act (Act). The Act, which went into effect on July 1, 2018, contains sweeping changes to the New Jersey Law Against Discrimination (NJLAD), including, among other items, a prohibition against discrimination with respect to compensation or financial terms of employment on the basis of any of the numerous characteristics protected by the NJLAD.²⁸

²⁷ Except for two limited differences, New Jersey currently follows the regulations of the USDOL that govern the overtime exemptions for executive, administrative, professional, outside sales, and some computer employees that are set forth in 29 C.F.R. Part 541. See N.J.A.C. 12:56-7.2, at <https://www.nj.gov/labor/wageandhour/tools-resources/laws/wageandhourlaws.shtml>.

To qualify for these overtime exemptions, the employees generally must be paid on a salary basis of at least \$684 per week. These salary requirements do not apply to outside sales employees, certain teachers, and employees practicing law or medicine. Exempt computer employees can be paid on either a salary basis of at least \$684 per week or an hourly basis of at least \$27.63 per hour. See USDOL, Fact Sheet #17G, *Salary Basis Requirement and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)* (Sept. 2019), at https://www.dol.gov/whd/overtime/fs17g_salary.pdf.

As the result of changes to the USDOL's regulations in 2019, which became effective on January 1, 2020, the required minimum weekly salary increased from \$455 (\$23,660 per year) to \$684 (\$35,568 per year). Pro Bono Partnership published a two-part article, *The U.S. Department of Labor's 2019 Revised White Collar Regulations*, that explains the 2019 changes and provides strategies for nonprofit compliance. See *Part I: Overview of the DOL's 2019 Final Rule and Its Impact on Nonprofits*, at <https://www.probonopartner.org/publications/u-s-department-labors-revised-white-collar-regulations-overview-dols-final-rule-impact-nonprofits>, and *Part II: Considerations and Strategies for Nonprofit Compliance*, at <https://www.probonopartner.org/publications/the-u-s-department-of-labors-revised-white-collar-regulations-considerations-and-strategies-for-nonprofit-compliance>.

²⁸ See Pro Bono Partnership's article, *New Jersey's Diane B. Allen Equal Pay Act* (June 2018), at <https://www.probonopartner.org/publications/new-jerseys-diane-b-allen-equal-pay-act>.

- Check to see if the NJDLWD has revised the *Wage and Hour Law Abstract* each time the minimum wage increases.

Questions

If you have any questions about the topics discussed in this article and you are associated with a New Jersey charitable nonprofit, feel free to contact Christine Michelle Duffy, Esq., from Pro Bono Partnership, at (973) 240-6955.

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Because of the legal risks involved, compensation audits normally should be conducted by or under the direction of an experienced employment lawyer.

To learn more about compensation audits, see Jeffrey M. Landes and Ann Knuckles Mahoney, *Conducting Pay Equity Audits* (Apr. 18, 2018), at <https://www.lexisnexis.com/lexis-practice-advisor/the-journal/b/lpa/posts/conducting-pay-equity-audits>; Liz S. Washko, *Reducing the Risks of Pay Discrimination Claims: Employer Pay Equity Audits* (Feb. 3, 2016), at <https://ogletree.com/insights/2016-02-03/reducing-the-risks-of-pay-discrimination-claims-employer-pay-equity-audits>; Proskauer Rose, *Tip of the Month: Best Practices for Compensation Audits* (Apr. 14, 2009), at <https://calemploymentlawupdate.proskauer.com/2009/04/tip-of-the-month-best-practices-for-compensation-audits>; Michael S. Kun, Jeffrey H. Ruzal, and Kevin Sullivan, *Wage and Hour Self-Audits Checklist* (Apr. 18, 2018), at <https://www.lexisnexis.com/lexis-practice-advisor/the-journal/b/lpa/posts/wage-and-hour-self-audits-checklist>; and USDOL, *The 10 Step Equal Pay Self-Audit for Employers*, reprinted at <http://publications.iowa.gov/19360/1/10%20Step%20Equal%20Pay%20Self.pdf> and <http://hr.cch.com/hhrlib/issues-answers/conducting-an-equal-pay-audit.asp?date=july-3>.

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Appendix

Workers in the following occupations or situations are not required to be paid the regular minimum wage:

1. Full-time students employed at a college or university at which they are enrolled, but not less than 85 percent of the applicable New Jersey minimum wage rate.²⁹
2. Part-time employees primarily engaged in the care and tending of children in the employer's home.³⁰
3. Salespersons of motor vehicles.³¹
4. Persons under the age of 18,³² except that the minimum wage must be paid to:
 - a. a minor who is 17 years old and has graduated from an approved vocational school;³³
 - b. a minor who is employed in:
 - (i) first processing of farm products occupations,³⁴

²⁹ N.J.S.A. 34:11-56a4(b)(3); N.J.A.C. 12:56-3.6(a)(1).

³⁰ N.J.S.A. 34:11-56a4(a); N.J.A.C. 12:56-3.6(a)(4).

³¹ N.J.S.A. 34:11-56a4(a); N.J.A.C. 12:56-3.6(a)(3).

³² N.J.S.A. 34:11-56a4; N.J.A.C. 12:56-3.6(a)(5). The NJDLWD has expressly noted that persons under the age of 18 employed in seasonal amusement occupations are not covered by New Jersey's minimum wage. NJDLWD, *Wage Order No. 2 - Governing Employment in Seasonal Amusement Occupations* (MW-72), at <https://www.nj.gov/labor/wageandhour/assets/PDFs/Forms%20and%20Publications/mw-72.pdf>.

New Jersey's Child Labor Law is codified at N.J.S.A. 34:2-21.1 to 21.64. The NJDLWD's Child Labor Regulations are set forth at N.J.A.C. 12:58-1.1 to 12:58-5.4. For a general summary of New Jersey's child labor regulations, including wage-hour matters, see <https://www.nj.gov/labor/wageandhour/tools-resources/youth-employment/index.shtml>.

³³ N.J.S.A. 34:11-56a4(a) and N.J.S.A. 34:2-21.15.

³⁴ N.J.A.C. 12:56-3.6(a)(5) and N.J.A.C. 12:56-11.2; N.J.S.A. 34:11-56a30; N.J.S.A. 34:11-56a16; NJDLWD, *Wage Order No. 1 - Employment in the First Processing of Farm Product*

(ii) hotel and motel occupations,³⁵ or

(iii) food service (restaurant) occupations;³⁶ or

c. a minor who is covered by one of the “Wage Orders for Minors”,³⁷ which

Occupations (MW-104), at

<https://www.nj.gov/labor/wageandhour/assets/PDFs/Forms%20and%20Publications/mw-104-1.pdf>.

Note that persons under the age of 18 employed in agricultural work are not covered by New Jersey’s minimum wage. NJDLWD, *NJ State Wage and Hour Law - Minimum Rates for Farm Workers* (MW-138), at

<https://www.nj.gov/labor/wageandhour/assets/PDFs/Forms%20and%20Publications/MW-138-1.pdf>; see also NJDLWD, *NJ Child Labor Law Permits Farmers to Employ Children* (MW-63), at <https://www.nj.gov/labor/wageandhour/assets/PDFs/Forms%20and%20Publications/MW-63-1.pdf>.

³⁵ N.J.A.C. 12:56-3.6(a)(5) and N.J.A.C. 12:56-13.2; N.J.S.A. 34:11-56a30; N.J.S.A. 34:11-56a16; NJDLWD, *Wage Order No. 3 - Governing Employment in Hotel and Motel Occupations* (MW-54), at

<https://www.nj.gov/labor/wageandhour/assets/PDFs/Forms%20and%20Publications/mw-54.pdf>; NJDLWD, *Supplement for Food Service and Hotel and Motel Occupations Regulations* (MW-13), at <https://www.nj.gov/labor/wageandhour/assets/PDFs/Forms%20and%20Publications/mw-13.pdf>.

³⁶ N.J.A.C. 12:56-3.6(a)(5) and N.J.A.C. 12:56-14.2; N.J.S.A. 34:11-56a30; N.J.S.A. 34:11-56a16; NJDLWD, *Food Service Occupations Regulations* (MW-278), at

<https://www.nj.gov/labor/wageandhour/assets/PDFs/Forms%20and%20Publications/mw-278.pdf>; NJDLWD, *Supplement for Food Service and Hotel and Motel Occupations Regulations* (MW-13), at <https://www.nj.gov/labor/wageandhour/assets/PDFs/Forms%20and%20Publications/mw-13.pdf>.

The regulations define “restaurant industry” as “any eating or drinking place which prepares and offers food or beverage for human consumption either in any of its premises or by such services as catering, banquets, box lunch or curb service,” and “restaurant occupation” as “any activity of any employee in the restaurant industry.” N.J.A.C. 12:56-14.1.

As the NJDLWD explains in *Youth Employment* (see “Minimum Wage” under the under the “Rate of Pay” tab), at <https://www.nj.gov/labor/wageandhour/tools-resources/youth-employment/index.shtml>:

Certain places are not required to pay minimum wage. Some examples are nursing homes, boardwalk and other seasonal amusements, summer camps, professional offices, and libraries. However, jobs related to food service in any of those places must pay the minimum wage. For example, an office worker in a nursing home can be paid less than the minimum wage; however, a dining room waitress in the nursing home must be paid minimum wage.

³⁷ N.J.A.C. 12:56-3.6(a)(5) and N.J.A.C. 12:57; N.J.S.A. 34:11-56a30; N.J.S.A. 34:11-56a16.

cover employment in:

- (i) mercantile (retail) occupations,³⁸
- (ii) beauty culture occupations,³⁹
- (iii) laundry, cleaning, and dyeing occupations,⁴⁰ and

³⁸ N.J.A.C. 12:57-3.3; NJDLWD, *Wage Order No. 11 - Mercantile Occupations* (MW-83), at <https://www.nj.gov/labor/wageandhour/assets/PDFs/Forms%20and%20Publications/mw-83.pdf>. The regulations define "mercantile occupation" as:

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; and
4. Does not mean work performed in the manufacturing of merchandise which is sold at wholesale by the manufacturer.

N.J.A.C. 12:57-3.2(a).

³⁹ N.J.A.C. 12:57-4.3; NJDLWD, *Wage Order No. 12 - Beauty Culture Occupations* (MW-238), at <https://www.nj.gov/labor/wageandhour/assets/PDFs/Forms%20and%20Publications/mw-238.pdf>. The regulations define "beauty culture occupation" as "any service, operation or process used or useful in the care, cleansing, or beautification of or in the enhancement of personal appearance, and all service, operation or process, incidental to such care, cleansing, beautification or enhancement, including the service of demonstrators, maids, cashiers, reception or appointment clerks." N.J.A.C. 12:57-4.2(b).

⁴⁰ N.J.A.C. 12:57-5.3; NJDLWD, *Wage Order No. 13 - Laundry, Cleaning & Dyeing Occupations* (MW-121), at <https://www.nj.gov/labor/wageandhour/assets/PDFs/Forms%20and%20Publications/mw-121.pdf>. The regulations define "laundry, cleaning and dyeing occupation" as "any activity of a minor or any capacity in the marking, sorting, washing, cleansing, collecting, ironing, assembling, packaging, pressing, receiving, shipping or delivery, or any other activity including clerical work, directly incidental or essential to the laundering, cleaning or renovating of any articles of clothing, napery, blanket, rugs, carpets, draperies, bed clothing fabric, textile, fur or leather, when such activity is not performed in the original process of manufacturing." N.J.A.C. 12:57-5.2.

(iv) light manufacturing and apparel occupations.⁴¹

5. Outside salespersons.⁴²
6. Persons employed in a volunteer capacity and receiving only incidental benefits at a county or other agricultural fair by a nonprofit or religious corporation or a nonprofit or religious association that conducts or participates in the fair.⁴³
7. Employees at summer camps, conferences, and retreats operated by a nonprofit or religious corporation or association, during the months of June, July, August, and September.⁴⁴
8. Unpaid student learners (interns) enrolled in a school-to-work program at for-profit and not-for-profit organizations.⁴⁵

⁴¹ N.J.A.C. 12:57-6.3; NJDLWD, *Law Abstract for the Apparel Registration Act (MW-59)*, at <https://www.nj.gov/labor/wageandhour/assets/PDFs/Forms%20and%20Publications/mw-59-1.pdf>. The regulations define:

- "Apparel industry" as "the making or otherwise producing of apparel, designed or intended to be worn by any individual."
- "Light manufacturing" as "a type of employment where the process or operation of making wares or any material produced and within compliance of the prohibitive occupations for minors as cited at N.J.S.A. 34:2-21.17[, which is a section of New Jersey's Child Labor Law,] regardless of the location of the place where the work is being performed."

N.J.A.C. 12:57-6.2.

⁴² N.J.S.A. 34:11-56a4(a); N.J.A.C. 12:56-3.6(a)(2).

⁴³ N.J.S.A. 34:11-56a4(a).

⁴⁴ N.J.S.A. 34:11-56a4.1; N.J.A.C. 12:56-3.6(a)(6). This exception applies to both day camps and resident camps. In contrast, New Jersey's Child Labor Law partial exception to the maximum hours of work for minors between ages 16 and 18 employed at a camp applies only to resident camps. N.J.S.A. 34:2-21.3 ("This section is not applicable to the employment of a minor between 16 and 18 years of age during the months of June, July, August or September by a summer resident camp, conference or retreat operated by a nonprofit or religious corporation or association, unless the employment is primarily general maintenance work or food service activities.").

⁴⁵ N.J.A.C. 12:56-18.1 to 18.2. The NJDLWD's school-to-work program regulations set forth the definitions and conditions necessary to allow for unpaid activities of student learners. Note that the definitions section (N.J.A.C. 12:56-18.1) in the NJDLWD's school-to-work program regulations) sets forth definitions for four terms – "career awareness and exploration," "incidental," "Internship," and "job shadowing" – despite the fact that just one of those terms ("incidental") is used in the regulations.

9. Workers employed pursuant to sub-minimum wage determinations issued by the NJDLWD, with respect to (a) learners, apprentices, and students or (b) sheltered workshop workers whose earning capacity is impaired by age or physical or mental deficiency or injury.⁴⁶
10. Employees (a) who are enrolled in an established employer on-the-job or other training program that meets the standards established by the NJDLWD; (2) who are being paid a training wage, which must not be less than 90% of the New Jersey minimum wage applicable to employers with six or more employees, for no more than the first 120 hours of work after being hired in an occupation in which the employees have no previous similar or related experience; and (3) for whom there is a reasonable expectation of regular employment at or above the effective minimum wage upon successful completion of the period of the training

⁴⁶ N.J.S.A. 34:11-56a17; N.J.A.C. 12:56-9.1 to 9.5 (“Employment of Individuals with Disabilities”). In 1995, the NJDLWD repealed its regulations relating to learners, apprentices, and students (N.J.A.C. 12:56-10) and replaced them with new regulations relating to unpaid student learners enrolled in a school-to-work program (N.J.A.C. 12:56-18.1 to 18.2), which are discussed above.

The NJDLWD has an “Application to Pay Less Than Minimum Wage to a Disabled Person” (Form MW-151), at <https://www.nj.gov/labor/wageandhour/assets/PDFs/mw-151-disabled.pdf>, and an Application for a Sheltered Workshop Certificate (Form MW-244), at <https://www.nj.gov/labor/wageandhour/assets/PDFs/mw-244-sheltered.pdf>.

A “sheltered workshop” means “a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency or injury, and to provide such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.” N.J.A.C. 12:56-9.1(b).

Under New Jersey’s corporation business tax (CBT) and the New Jersey gross income tax (GIT), if a sheltered workshop is an occupation-oriented facility operated by a nonprofit that has entered into a contract with the NJDLWD’s Division of Vocational Rehabilitation Services to employ and provide extended employment programs to persons with severe disabilities, then the sheltered workshop is potentially eligible for a tax credit for the employment of such persons, up to a maximum of \$1,000 for each person per tax period. See N.J.S.A. 54:10A-5.38; N.J.S.A. 54A:4-11; N.J.S.A. 34:16-39 et seq.; N.J.S.A. 34:11-56a17; N.J. Division of Taxation, *Corporation Business Tax Credits and Incentives*, at <https://www.state.nj.us/treasury/taxation/cbt-creditlist.shtml>. In order to claim this credit, a CBT taxpayer must submit Form 317 (<https://www.nj.gov/treasury/taxation/pdf/current/cbt/317.pdf>) and a GIT taxpayer must submit Form GIT-317 (<https://www.nj.gov/treasury/taxation/pdf/current/git317.pdf>).

However, there is nothing stated in either the CBT tax credit provision (N.J.S.A. 54:10A-5.38) or the GIT tax credit provision (N.J.S.A. 54A:4-11) that allows a nonprofit corporation to receive a credit.

wage.⁴⁷

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⁴⁷ N.J.S.A. 34:11-56a4(g); N.J.A.C. 12:56-3.4.

The regulations define "established employer on-the-job or other training program" as "an existing on-the-job or other training program that, when completed by the employee, either results in the employee earning an industry-valued credential or results in the employee being awarded credit that may be directly applied toward the earning of an industry-valued credential." N.J.A.C. 12:56-2.1.