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**RULE PROPOSALS**

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

*43 N.J.R. 1496(a)*

**Proposed New Rules: N.J.A.C. 12:67**

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

**Prohibited Discrimination Against Unemployed Individuals**

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20* and *34:1A-3(e)*.

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

Proposal Number: PRN 2011-140.

A **public hearing** on the proposed new rules will be held on the following date at the following location:

Monday, August 1, 2011  
10:00 A.M. to 12:00 Noon  
New Jersey Department of Labor and Workforce Development  
John Fitch Plaza  
2nd Floor 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 September 3, 2011 to:

David Fish, Regulatory Officer  
Office of Legal and Regulatory Services  
NJ Department of Labor and Workforce Development  
P.O. Box 110 - 13th Floor  
Trenton, New Jersey 08625-0110

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The agency proposal follows:

### **Summary**

The Department is proposing new rules at N.J.A.C. 12:67-1.1 through 1.5 in order to implement P.L. 2011, c. 40 (the Act), which prohibits employers from knowingly or purposefully publishing in print or on the internet an advertisement for any job vacancy in the State that contains a provision indicating that the employer will not consider the applications of unemployed individuals.

Proposed new N.J.A.C. 12:67-1.1 would set forth the purpose and scope of the chapter.

Proposed new N.J.A.C. 12:67-1.2 would include definitions of words and terms used throughout the chapter.

Proposed new N.J.A.C. 12:67-1.3 would address what constitutes a violation of the Act.

Proposed new N.J.A.C. 12:67-1.4 would concern the assessment of administrative penalties when there has been a violation of the Act.

Proposed new N.J.A.C. 12:67-1.5 would address the appeal process available to an employer against whom an administrative penalty has been levied for violation of the Act.

[page=1497] As the Department has provided a 60-day comment period for 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 proposed new rules would have a positive social impact in that they would establish a regulatory framework for the assessment of penalties and processing of appeals where a violation of the Act has occurred, thereby enabling the Department to effectively enforce the Act as is its statutory charge.

### **Economic Impact**

The proposed new rules would have no economic impact beyond that which would result from the possible levying of penalties by the Department for violation of the Act's prohibition against knowingly or purposefully publishing in print or on the Internet an advertisement for any job vacancy in the State that contains a provision indicating that the employer will not consider the applications of unemployed individuals.

### **Federal Standards Statement**

The proposed new rules do not exceed standards or requirements imposed by Federal law as there are currently no Federal standards or requirements applicable to the subject matter of this rulemaking. As a result, a Federal standards analysis is not required.

### **Jobs Impact**

The Department does not anticipate that the proposed new rules would result in either the generation or loss of jobs.

### **Agriculture Industry Impact**

The proposed new rules would have no impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

The proposed new rules would prohibit all employers, including those which are small businesses, as that term is defined within the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq., from knowingly or purposefully publishing in print or on the Internet an advertisement for any job vacancy in the State that contains a provision indicating that the employer will not consider the applications of unemployed individuals. This prohibition is expressly dictated by the Act. No distinction relative to the prohibition is made within the Act between large and small businesses. The Department has no discretion to deviate from the Act. The proposed new rules would, however, include the size of the em-

ployer among the factors to be considered when determining what constitutes an appropriate administrative penalty for a particular violation. This is within the Department's discretion under the Act.

### **Smart Growth Impact**

The proposed new rules would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

### **Housing Affordability Impact Analysis**

The proposed new rules would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed new rules pertain to discrimination against unemployed individuals in the advertisement by employers for job vacancies within the State. The proposed new rules do not pertain to housing.

### **Smart Growth Development Impact Analysis**

The proposed new rules would not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed new rules pertain to discrimination against unemployed individuals in the advertisement by employers for job vacancies within the State. The proposed new rules do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

**Full text** of the proposed new rules follows:

#### CHAPTER 67

#### PROHIBITED DISCRIMINATION AGAINST UNEMPLOYED INDIVIDUALS

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 12:67-1.1 Purpose and scope

(a) The purpose of this chapter is to effectuate P.L. 2011, c. 40.

(b) The chapter is applicable to each employer or employer's agent, representative or designee which publishes in print or on the Internet an advertisement for any job vacancy in the State of New Jersey.

##### 12:67-1.2 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. 2011, c. 40.

"Commissioner" means the Commissioner of Labor and Workforce Development or his or her designee.

"Department" means the Department of Labor and Workforce Development.

"Director" means the Director of the Division of Wage and Hour Compliance, within the Department of Labor and Workforce Development, or his or her designee.

##### 12:67-1.3 Violations

(a) A violation of the Act shall occur when, unless otherwise permitted by the provisions of N.J.S.A. 11A or any other law, rule or regulation, an employer or an employer's agent, representative or designee knowingly or purposefully publishes, in print or on the Internet, an advertisement for any job vacancy in the State of New Jersey that contains one or more of the following:

1. Any provision stating that the qualifications for a job include current employment;
2. Any provision stating that the employer or employer's agent, representative, or designee will not consider or review an application for employment submitted by any job applicant currently unemployed; or
3. Any provision stating that the employer or employer's agent, representative, or designee will only consider or review applications for employment submitted by job applicants who are currently employed.

(b) Nothing in (a) above shall be construed to prohibit an employer or employer's agent, representative, or designee from publishing in print or on the Internet an advertisement for any job vacancy in the State of New Jersey that contains any provision setting forth any other qualifications for a job, as permitted by law, including but not limited to, the holding of a current and valid professional or occupational license, certificate, registration, permit or other credential, or a minimum level of education, training or professional, occupational or field experience.

(c) Nothing in (a) above shall be construed to prohibit an employer or employer's agent, representative, or designee from publishing in print or on the Internet an advertisement for any job vacancy that contains any provision stating that only applicants who are currently employed by such employer will be considered.

#### 12:67-1.4 Administrative penalties

(a) When the Director finds that an employer or employer's agent, representative, or designee has violated the Act, the Director is authorized to assess an administrative penalty against the employer in the amounts that follow:

1. First violation - not more than \$ 1,000;
2. Second violation - not more than \$ 5,000; and
3. Third and subsequent violations - not more than \$ 10,000.

(b) No administrative penalty shall be levied pursuant to this chapter unless the Director provides the alleged violator with written notification of the violation, the amount of the penalty, and the opportunity to appeal the penalty assessment to the Commissioner.

(c) In determining what constitutes an appropriate administrative penalty for a particular violation, the following factors shall be considered, where applicable:

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; and

[page=1498] 5. Any other factors which are deemed to be appropriate under the circumstances.

#### 12:67-1.5 Appeals

(a) When the Director assesses an administrative penalty under N.J.A.C. 12:67-1.4, the employer shall have the right to file an appeal with the Commissioner.

(b) An appeal must be received by the Commissioner within 15 business days following receipt by the employer of the notification described in N.J.A.C. 12:67-1.4(b).

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(c) The Commissioner shall decide any appeal filed under (b) above on the written record or shall provide a hearing pursuant to 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*.