

55 N.J.R. 1134(a)

VOLUME 55, ISSUE 11, JUNE 5, 2023

RULE PROPOSALS

Reporter

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Interested Persons Statement

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

Agency

LABOR AND WORKFORCE DEVELOPMENT > OFFICE OF THE COMMISSIONER

Administrative Code Citation

Proposed New Rules: N.J.A.C. 12:9

Text

Precondition to Award of Direct Business Assistance from the Department and for the Department to Report to Another State Agency or Entity that a Business is in Substantial Good Standing with the Department; Required Contract Provision for Direct Business Assistance from the Department

Authorized By: Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:1-20.

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

Proposal Number: PRN 2023-044.

Submit written comments by August 4, 2023, to:

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Legal and Regulatory Services
New Jersey Department of Labor and Workforce Development
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The agency proposal follows:

Summary

The Department of Labor and Workforce Development (Department) is proposing new rules at N.J.A.C. 12:9, in order to implement N.J.S.A. 34:15D-33 through 34 (the Act), which became effective July 8, 2021, and which establishes, as a precondition to the award of direct business assistance from the Department, and as a precondition for the Department to report to another State agency or entity that a business is in substantial good standing, a determination by the Department that the "person" at issue (the term, "person," defined within the Act to mean "a natural person or an organization, including but not limited to, a corporation, partnership, proprietorship, limited liability company, association, cooperative, joint venture, estate, trust or government unit") has no outstanding liability to the Department pursuant to any of the statutes or rules that the Department enforces, including, but not limited to, for unpaid contributions to the unemployment compensation fund or the State disability benefits fund; to any individual on whose behalf the Department has issued a final order for the payment of wages or benefits; or for any penalties, fees, or interest due the Department pursuant to a final order issued under any of the statutes or rules that the Department enforces.

The Act also establishes, within the Department, an Office of Strategic Enforcement and Compliance, which has among its statutory responsibilities, oversight, and coordination of the process by which the Department makes the above-described good standing determination.

Thus, the Department is proposing a new Chapter 9, which would include the following new subchapters:

Subchapter 1 would set forth the purpose and scope of Chapter 9, including definitions of words and terms used throughout Chapter 9, and establish the procedure by which the Department's Office of Strategic Enforcement and Compliance would make, and communicate, each individual good standing determination on behalf of the Commissioner and the Department.

Subchapter 2 would apply only to direct business assistance from the Department and would require that each contract for such direct business [page=1135] assistance must contain a provision stating that sufficient grounds exist for immediate termination of the contract by the Department if, at any time during the term of the contract, the person contracting with the Department for direct business assistance is found to have incurred liability to the Department pursuant to any of the statutes or rules that the Department enforces; provided that the Department has the discretion prior to terminating the contract to afford the person receiving direct business assistance with 15 business days to provide proof of having entered into an agreement with the affected departmental program area to

immediately and fully comply with the statutes and rules enforced by the Department and to resolve all delinquencies or deficiencies within a time period specified by the departmental program area within the body of the agreement.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements at 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 seek to ensure that taxpayer funded business assistance is not being awarded to those who have violated the State's labor laws and, as a result, owe money to one of the Department's dedicated funds, such as the unemployment compensation fund and State disability benefits fund, or to workers on whose behalf the Department has issued an assessment(s) for unpaid wages or for other similar violations. Such unlawful acts on the part of businesses not only harm individual workers, but also allow bad actors to gain an unfair advantage over responsible, law abiding, competitors. The proposed new rules would also have a positive social impact in that they would establish a regulatory framework for the Department's implementation of the Act. The added certainty that results from the publication of procedural rules such as new N.J.A.C. 12:9 should inure to the benefit of both the regulated community and the Department.

Economic Impact

A finding pursuant to the proposed new rules that a given business is not in substantial good standing with the Department is likely to have a negative impact on that business in that the impacted business will be foreclosed from receiving direct business assistance from the Department and may be foreclosed from receiving financial assistance from other State agencies or entities. However, those rules that provide mechanisms for a business to avoid a finding by the Department that the business is not in good standing if, the impacted business is able within 15 business days, to provide proof of having entered into an agreement with the affected departmental program area to comply with the statutes and rules enforced by the Department and to resolve all delinquencies or deficiencies within a time-period specified by the Departmental program area within the body of the agreement, should minimize the negative economic impact described above. It is also the Department's hope that the new rules would have a positive economic impact in that they would minimize any possible confusion as to the procedures employed by the Department to implement the Act, which should avoid costs for those impacted of unnecessary litigation, which might otherwise result.

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 impact the agriculture industry in precisely the same way that they would impact any other industry; which is to say, covered agriculture industry employers would be required to comply with the Act and the proposed new rules, as would any other covered person. Neither the Act, nor the proposed new rules, differentiate among covered persons based on industry type.

Regulatory Flexibility Analysis

The proposed new rules would reflect a uniform application of the Act, as dictated by the Act itself, to all covered persons, including those that are small businesses, as that term is defined within the Regulatory Flexibility Act,

N.J.S.A. 52:14B-16 et seq. That is, pursuant to the Act, for any business, large or small, it is a precondition to the award of direct business assistance from the Department and is a precondition for the Department to report to another State agency or entity that a business is in substantial good standing, that there be a determination whether the business has any outstanding liability to the Department pursuant to any of the statutes or rules that the Department enforces. There are no reporting, recordkeeping, or compliance requirements pursuant to the new rules, except as noted in the Summary above. The Department has no discretion to deviate from this statutory mandate.

Housing Affordability Impact Analysis

The proposed new rules would not evoke a change in the average costs associated with housing or on the affordability of housing in the State. The basis for this finding is that the proposed new rules pertain to the obligations of employers pursuant to the laws and rules enforced by the Department. The proposed new rules do not pertain to housing.

Smart Growth Development Impact Analysis

The proposed new rules 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. The basis for this finding is that the proposed new rules pertain to the obligations of employers pursuant to the laws and rules enforced by the Department. The proposed new rules do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere else in the State of New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commissioner has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rule follows:

CHAPTER 9

PRECONDITION TO AWARD OF DIRECT BUSINESS ASSISTANCE FROM THE DEPARTMENT AND FOR THE DEPARTMENT TO REPORT TO ANOTHER STATE AGENCY OR ENTITY THAT A BUSINESS IS IN SUBSTANTIAL GOOD STANDING WITH THE DEPARTMENT; REQUIRED CONTRACT PROVISION FOR DIRECT BUSINESS ASSISTANCE FROM THE DEPARTMENT

SUBCHAPTER 1. DEPARTMENT DETERMINATION; SUBSTANTIAL GOOD STANDING

12:9-1.1 Purpose and scope

(a) The purpose of this subchapter is to implement P.L. 2021, c. 166 (N.J.S.A. 34:15D-33 and 34), which states that, as a precondition to the award to a person of direct business assistance from the Department, and as a precondition for the Department to report to another State agency or entity that a business is in substantial good standing, the Department shall determine whether the person has any outstanding liability to the Department, pursuant to any of the statutes or rules that the Department enforces, including, but not limited to, for unpaid contributions to the unemployment compensation fund or the State disability benefits fund; to any individual on whose behalf the Department has issued a final order for the payment of wages or benefits; or for any penalties, fees, or interest due to the Department pursuant to a final order issued pursuant to the statutes or rules that the Department enforces.

(b) This subchapter shall apply to all persons applying for direct business assistance from the Department, or regarding whom any other State agency or entity is seeking a determination from the Department that the business is in substantial good standing.

[page=1136] 12:9-1.2 Definitions

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

"Commissioner" means the Commissioner of the Department of Labor and Workforce Development, or his or her authorized representative.

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

"Direct business assistance from the Department" means monetary or financial assistance in any form, including, but not limited to, a grant or other monetary or financial benefit awarded to a person by the Department to assist the person in the conduct or operation of a business, occupation, trade, or profession in the State, in connection with the following programs:

1. Customized training services provided pursuant to N.J.S.A. 34:15D-5;
2. Employment and training services provided pursuant to N.J.S.A. 34:15D-6;
3. Employment and training services funded by the Supplemental Workforce Fund for Basic Skills pursuant to N.J.S.A. 34:15D-21;
4. Outreach and training programs for minority group members and women in construction trade occupations or other occupations utilized in the performance of public works contracts funded by the New Jersey Builders Utilization Initiative for Labor Diversity (NJBUILD) pursuant to N.J.S.A. 52:38-7;
5. The New Jersey Innovation and Research Fellowship Program pursuant to N.J.S.A. 34:15D-26;
6. The Apprenticeship Start-Up Grant Program pursuant to N.J.S.A. 34:15D-6.1;
7. The Apprentice Assistance and Support Services Pilot Program pursuant to N.J.S.A. 34:15D-6.2;
8. The New Jersey Pathways Leading Apprentices to a College Education (NJPLACE) Program pursuant to N.J.S.A. 34:15D-24;
9. Any other program funded in whole, or in part, by the Workforce Development Partnership Fund established pursuant to N.J.S.A. 34:15D-9;
10. Any program funded by or through the Department, in whole, or in part, pursuant to the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. §§ 3101 et seq.;
11. Any program funded by or through the Department, in whole, or in part, pursuant to the Wagner-Peyser Act, 29 U.S.C. §§ 49 et seq.;
12. The Talent Network Program pursuant to N.J.S.A. 34:15D-29;
13. The Industry-Valued Credential's Pilot Program pursuant to N.J.S.A. 34:15D-30 et seq.;
14. The High-Growth Industry Regional Apprenticeship Development Grant Pilot Program pursuant to N.J.S.A. 34:15D-32;
15. The Youth Transitions to Work Partnership pursuant to N.J.S.A. 34:15E-1 et seq.;
16. The Mentoring At-Risk Youth Program pursuant to N.J.S.A. 34:15F-1 et seq.;
17. Any Extended Employment Program pursuant to N.J.S.A. 34:16-39 et seq.; or

18. Any other similar program by which the Department confers a monetary or financial benefit upon a person to assist the person in the conduct or operation of a business, occupation, trade, or profession in the State.

"Final order" means either a final administrative determination of the Commissioner issued following adjudication of a matter as a contested case 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, or where the Department has made a finding regarding a violation of law or rule, or regarding the levying of a penalty or fee pursuant to law or rule, and has notified the violator of same and where the violator has either expressly waived the right to a hearing or has waived the right to a hearing by virtue of having failed to request same within the appropriate time limit established by either law or rule.

"Office" means the "Office of Strategic Enforcement and Compliance," within the Department, established pursuant to N.J.S.A. 34:15D-34.

"Person" means a natural person or an organization, including, but not limited to, a corporation, partnership, proprietorship, limited liability company, association, cooperative, joint venture, estate, trust, or government unit.

12:9-1.3 Precondition for receipt of direct business assistance from the Department, and for the Department to report to another State agency or entity that a business is in substantial good standing

(a) As a precondition to the award of direct business assistance from the Department, and as a precondition for the Department to report to another State agency or entity that a business is in substantial good standing, the Office shall determine whether the person has any outstanding liability to the Department pursuant to any of the statutes or rules that the Department enforces, including, but not limited to, for unpaid contributions to the unemployment compensation fund or the State disability benefits fund; to any individual on whose behalf the Department has issued a final order for the payment of wages or benefits; or for any penalties, fees, or interest due the Department pursuant to a final order issued under any of the statutes or rules that the Department enforces.

(b) If the Office determines that a person has any outstanding liability to the Department pursuant to any of the statutes or rules that the Department enforces, the application by the person for direct business assistance from the Department shall be denied, and it shall be reported to any inquiring State agency or entity that the business is not in substantial good standing; except that the Office may, notwithstanding the outstanding liability to the Department pursuant to statutes or rules that the Department enforces, find that the application of such a person for direct business assistance from the Department may be granted, and may report to any inquiring State agency or entity that the business is in substantial good standing, if all of the following conditions have been met:

1. The person has entered into a written agreement with the affected departmental program area to immediately and fully comply with the statutes and rules enforced by the Department and to resolve all delinquencies or deficiencies within a time-period specified within the body of the agreement, and the affected departmental program area confirms to the Office that the person is not in default of its obligations pursuant to the written agreement;

2. The person is not on a debarment list, or any list prohibiting the person from contracting with any public body, administered by the Department pursuant to any of the statutes or rules that the Department enforces; and

3. The person is not currently serving a suspension or revocation of any license, certificate, or registration, issued by the Department pursuant to any of the statutes or rules that the Department enforces.

(c) Where the Office determines that a person has outstanding liability to the Department pursuant to (a) above, and provided the conditions set forth at (b)2 and 3 above have been met, the Office shall, within 20 business days of a person having submitted an application for direct business assistance from the Department, or of another State agency or entity having requested a report from the Department whether a business is in substantial good standing, notify the person, in writing, either by regular or electronic mail, of any outstanding liability owed and shall provide the person 15 business days from the date that the notification is mailed or sent electronically within which to provide proof to the Office of having entered into a written agreement with the affected Departmental program area to immediately and fully comply with the statutes and rules enforced by the Department and to resolve all

delinquencies or deficiencies within a time-period specified by the departmental program area within the body of the agreement.

(d) Where the Office is satisfied that an agreement to immediately and fully comply with the statutes and rules enforced by the Department and to resolve all delinquencies or deficiencies within a time period specified by the Department within the body of the agreement has been reached between the person and the affected departmental program area, and where the affected departmental program area confirms to the Office that the person is not in default of its obligations pursuant to the agreement, the Office may, in its discretion, determine that the person has met the precondition set forth at N.J.S.A. 34:15D-34 to the award of direct business assistance from the Department, or for the Department to report to another State agency or entity that the business is in substantial good standing, provided the person satisfies the requirements at (b)2 and 3 [page=1137] above; that is, provided the person is not on a debarment list or a list prohibiting the person from contracting with any public body, administered by the Department pursuant to any of the statutes or rules that the Department enforces, and provided the person is not currently serving a suspension or revocation of any license, certificate, or registration, issued by the Department pursuant to any of the statutes or rules that the Department enforces.

(e) The finding of the Office as to whether the precondition set forth at N.J.S.A. 34:15D-34 to the award of direct business assistance from the Department, or for the Department to report to another State agency or entity that the business is in substantial good standing, has been met, shall be communicated by the Office exclusively to the departmental program area evaluating the application for direct business assistance from the Department, or the State agency or entity requesting a report from the Department whether a business is in substantial good standing, as appropriate.

SUBCHAPTER 2. DIRECT BUSINESS ASSISTANCE FROM THE DEPARTMENT; CONTRACT PROVISION REQUIRED

12:9-2.1 Scope and purpose

(a) The purpose of this subchapter is to ensure that each person receiving direct business assistance from the Department is obligated for the full term of any contract with the Department for receipt of the direct business assistance to ensure that the person incurs no liability to the Department pursuant to any of the statutes or rules that the Department enforces, including, but not limited to, for unpaid contributions to the unemployment compensation fund or the State disability benefits fund; to any individual on whose behalf the Department has issued a final order for the payment of wages or benefits; or for any penalties, fees, or interest due the Department pursuant to a final order issued pursuant to any of the statutes or rules; or, in the alternative, to ensure that if the person receiving direct business assistance from the Department does incur such liability to the Department during the term of its contract with the Department, the person's continued receipt of direct business assistance pursuant to the contract with the Department is conditioned upon:

1. The person providing proof to the Department of having entered into an agreement with the affected departmental program area to immediately and fully comply with the statutes and rules enforced by the Department and to resolve all delinquencies or deficiencies within a time period specified by the departmental program area within the body of the agreement; and

2. The Department confirming that the person is not in default of its obligations pursuant to the agreement.

(b) This subchapter shall apply to all persons contracting with the Department for direct business assistance.

12:9-2.2 Contract provision required

(a) Each contract for direct business assistance from the Department shall contain a provision stating that sufficient grounds exist for immediate termination of the contract by the Department if, at any time during the term of the contract, the person contracting with the Department is found to have incurred liability to the Department pursuant to any of the statutes or rules that the Department enforces, including, but not limited to, for unpaid contributions to the unemployment compensation fund or the State disability benefits fund; to any individual on whose behalf the

Department has issued a final order for the payment of wages or benefits; or for any penalties, fees, or interest due the Department pursuant to a final order issued under any of the statutes or rules that the Department.

(b) Prior to terminating the contract for direct businesses assistance from the Department pursuant to the contract provision described at (a) above, the Department shall provide the person receiving direct business assistance with 15 business days to provide proof to the Department of having entered into an agreement with the affected Departmental program area to immediately and fully comply with the statutes and rules enforced by the Department and to resolve all delinquencies or deficiencies within a time period specified by the Departmental program area within the body of the agreement.

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