



**User Name:** Alida Kass

**Date and Time:** Tuesday, May 14, 2019 10:10:00 AM EDT

**Job Number:** 88835745

## Document (1)

1. [51 N.J.R. 536\(a\)](#)

**Client/Matter:** -None-

## [51 N.J.R. 536\(a\)](#)

VOLUME 51, ISSUE 9, MAY 6, 2019

### RULE PROPOSALS

#### Reporter

51 N.J.R. 536(a)

***NJ - New Jersey Register > 2019 > MAY > MAY 6, 2019 > RULE PROPOSALS > LABOR AND WORKFORCE DEVELOPMENT -- OFFICE OF RESEARCH AND INFORMATION***

## **Interested Persons Statement**

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### 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**

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LABOR AND WORKFORCE DEVELOPMENT > **OFFICE OF RESEARCH AND INFORMATION**

## **Administrative Code Citation**

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Proposed New Rules: N.J.A.C. 12:10

## **Text**

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### **Equal Pay Reporting by State Contractors for Qualifying Services and Public Works**

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

Authority: P.L. 2018, c. 9.

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

Proposal Number: PRN 2019-053.

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

Friday, May 24, 2019

10:00 A.M.

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) 777-2960 if you wish to be included on the list of speakers.

Submit written comments by July 5, 2019, to:

David Fish, Executive Director

Legal and Regulatory Services

NJ Department of Labor and Workforce Development

PO Box 110-13th Floor

Trenton, New Jersey 08625-0110

[david.fish@dol.nj.gov](mailto:david.fish@dol.nj.gov)

The agency proposal follows:

### **Summary**

The Department of Labor and Workforce Development (Department) is proposing new rules at N.J.A.C. 12:10 in order to implement the Diane B. Allen Equal Pay Act, P.L. 2018, c. 9 (Act). Section 5 of the Act, which is codified at N.J.S.A. 34:11-56.14, imposes a reporting requirement upon each employer who enters into a contract with the State, or any agency or instrumentality of the State, in order to provide qualifying services or perform public work. Specifically, N.J.S.A. 34:11-56.14 requires: (1) that employers who enter into contracts with the State to provide qualifying services must report to the Department, in a form prescribed by the Department through rule, information regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category; and (2) that employers who enter into contracts with the State to perform public works must provide to the Department, through certified payroll records required under the State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., information regarding the gender, race, job title, occupational category, and rate of total compensation for every employee of the employer employed in the State in connection with the contract. Under the Act, the Department must retain the information provided by the covered employer during any period of time that one or more contracts are in effect between the employer and any public body and not less than five years after the end of that period. Furthermore, under the Act, the retained employment information must be made available by the Department to the Division on Civil Rights in the Department of Law and Public Safety, and, upon request, the Department must provide the retained employment information to anyone who is, or was, an employee of the employer during the period of any of the contracts between the employer and any public body.

A summary of the subchapters of proposed new N.J.A.C. 12:10 follows:

Proposed new Subchapter 1 would contain general provisions, including the purpose and scope of the chapter and definitions of words and terms used throughout the chapter. Among the terms that would be defined within Subchapter 1 are "Annual Equal Pay Report for Qualifying Services," which would mean the form found in N.J.A.C. 12:10 Appendix A and "Payroll Certification for Public Works Projects," which would mean the form found in

N.J.A.C. 12:10 Appendix B. These are the forms [page=537] that would be used by covered employers to comply with the Act's reporting requirements, described in detail both above and below.

Proposed new Subchapter 2 would concern the reporting requirement for employers entering into contracts with the State to provide qualifying services. Specifically, the subchapter would set forth the form and frequency of the reporting and would provide guidance to covered employers with regard to particular requirements imposed by N.J.S.A. 34:11-56.14, relative to completion and submission of the report. For example, proposed new N.J.A.C. 12:10-2.1 would indicate that the equal pay report for qualifying services is an annual report, which covered employers would be required to submit no later than March 31 following the calendar year in which the contract to provide qualifying services became effective, and each March 31 thereafter for the preceding calendar year during which the contract remains in effect. Proposed new N.J.A.C. 12:10-2.2 would concern the requirement that covered employers submit a separate report for each establishment of the employer, provide a definition for the term "establishment," and explain how a covered employer would report both employees whose physical activities are dispersed and those who work from home. Proposed new N.J.A.C. 12:10-2.3 would indicate that the covered employer is not required to identify any employee by name in the report, but rather, would be required to list the number of employees at the establishment who meet each of the criteria in the succeeding columns of the report, which are entitled: job, demographic, hours, and compensation. Proposed new N.J.A.C. 12:10-2.4 and 2.5 would list the job categories and categories of sex, race, and ethnicity to be used by covered employers in completing the equal pay report. Proposed new N.J.A.C. 12:10-2.6 would address how covered employers are to report hours worked, explaining, among other things, that covered employers would be permitted to estimate hours worked for employees who are exempt under the Federal Fair Labor Standards Act, [29 U.S.C. §§ 201](#) et seq., or the New Jersey Wage and Hour Law, [N.J.S.A. 34:11-56a](#) et seq., at a rate of 40 hours per week for full-time employees and 20 hours per week for part-time employees. Finally, proposed new N.J.A.C. 12:10-2.7 would set forth how covered employers are to calculate and report employee compensation, and delineates the 12 pay bands for doing so.

Proposed new Subchapter 3 would concern the reporting requirement for employers entering into contracts with the State to perform public works. Specifically, the subchapter would describe the information under N.J.S.A. 34:11-56.14 that must be added by the employer to the certified payroll record submitted on a weekly basis to the public body under State Prevailing Wage Act, N.J.S.A. 34:11-56.25, and now to the Department under N.J.S.A. 34:11-56.14.

As the Department has provided a 60-day comment period for this notice of proposal, the notice is excepted from the rulemaking calendar requirements pursuant to [N.J.A.C. 1:30-3.3\(a\)5](#).

### **Social Impact**

Most of the proposed new rules either mirror N.J.S.A. 34:11-56.14 or are necessitated by N.J.S.A. 34:11-56.14. Therefore, whatever negative social impact might be felt would derive, in the first instance, from the Act and not the proposed new rules. As to the proposed new rules, the Department believes that the collection and availability of the payroll and demographic data required by the Act would have a positive social impact in that it would permit interested parties, including the Division on Civil Rights, to examine the data for potential inequities in compensation. The reporting requirement can be considered a necessary corollary to enforcing the Act's prohibition against pay discrimination. Collection and analysis of this data would assist the State in implementing the Law Against Discrimination's goal of "eradicating the scourge of discrimination" from society. [L.W. ex rel. L.G. v. Toms River Regional Schools Bd. of Educ., 189 N.J. 381, 390 \(2007\)](#).

### **Economic Impact**

As indicated in the Social Impact statement, since the proposed rules either mirror N.J.S.A. 34:11-56.14 or are necessitated by it, whatever negative economic impact might be felt by covered employers would derive, in the first instance, from the Act, not the proposed new rules. The Department recognizes that covered employers will incur costs in compiling and analyzing payroll and demographic information for submission to the Department. Ultimately, however, it is the Department's hope that covered employers' attention to these issues will minimize non-compliance with the Law Against Discrimination, avoiding potential litigation and its associated costs.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal standards or requirements. Specifically, the proposed new rules are governed by State law, N.J.S.A. 34:11-56.14, which imposes certain payroll and demographic reporting requirements on employers who enter into contracts with the State to provide qualifying services or perform public works. There are no Federal standards or requirements regarding the reporting of payroll and demographic information that stem from the contractual relationship between an employer and the State of New Jersey. That said, Section 709(c) of Title VII, of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e, et seq.), and 29 CFR Part 1602, require the submission of similar payroll and demographic information to the Federal government by most private sector employers with 100 or more employees and most Federal contractors with 50 or more employees. That information is reported to the Federal government using the Employer Information EEO-1 report (Standard Form 100). The EEO-1 form has been in use since 1966, and has permitted the Federal government to gather extensive information concerning pay data for private sector employers and Federal contractors. It requires much, if not all, of the same information that would be required of State contractors under the proposed new rules. In fact, the Department was guided in many respects by the EEO-1 form in its development of the Annual Equal Pay Report for Qualifying Services; for example, both the latter report and the EEO-1 are annual reports and both use the same categories for race, ethnicity, and job category.

### **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 it would impact any other industry. That is to say, agricultural employers who contract with the State are subject to the exact same reporting requirements as contractors in all other industries.

### **Regulatory Flexibility Analysis**

The proposed new rules would require all covered employers, 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., who contract with the State to provide qualifying services or to perform public works to submit certain employee payroll and demographic data to the Department. Under the Act, "employee" means an individual engaged in service to an employer in the business of the employer, but does not include any individual employed in the domestic service of any person and "employer" means any one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries, and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards, or bodies. These definitions follow the New Jersey Law Against Discrimination's broad definitions of "employer" and "employee," and the Department has no discretion to deviate from them. However, recognizing the potential cost to employers, including small employers, of compliance with the reporting requirement relative to qualifying services (the Legislature has given the Department little if any discretion regarding the form and frequency of the report for public works contractors, as N.J.S.A. 34:11-56.14 expressly states that those employers are to use the certified payroll record required under the State Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.), the Department has determined that the covered employer shall only be required to submit the equal pay report on an annual basis and only with regard to employees working in New Jersey. The Department has also determined that the covered employer shall not be required to provide the names of each individual employee; but rather, would be permitted to indicate the number of employees who fall within each of the compensation, hours worked, and demographic categories. Finally, the Department has instructed employers to use the IRS Form W-2, Box #1, information for the purpose of establishing annual compensation (a number readily [page=538] available to employers) and is proposing 12 pay bands for use in reporting compensation, rather than requiring that employers report a precise dollar amount. These characteristics of the chapter should ease the administrative burden on covered employers, including small employers.

### **Housing Affordability Impact Analysis**

The proposed new rules would not evoke a change in the average costs associated with housing or have any effect on the affordability of housing. The basis for this finding is that the proposed new rules pertain only to the reporting of payroll and demographic data by State contractors. 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 only to the reporting of payroll and demographic data by State contractors to the Department. 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.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department 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.

## **Regulations**

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Full text of the proposed new rules follows:

### **CHAPTER 10**

PUBLIC WORKS CONTRACTOR AND QUALIFYING SERVICES CONTRACTOR REPORTING REQUIREMENTS UNDER THE DIANE B. ALLEN EQUAL PAY ACT, P.L. 2018, c. 9, § 5 (N.J.S.A. 34:11-56.14)

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **12:10-1.1 Purpose and scope**

- (a) The purpose of this chapter is to issue, by rule, both the form of reports that shall be used by covered employers in order to comply with the requirements set forth at N.J.S.A. 34:11-56.14 and the manner in which covered employers shall submit those reports to the Department.
- (b) The provisions of this chapter shall be applicable to all covered employers.

#### **12:10-1.2 Definitions**

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

"Administrative support workers" means individuals who are in positions involving non-managerial tasks providing administrative and support assistance, primarily in office settings. Examples of these types of positions include: office and administrative support workers, bookkeepers, accounting and auditing clerks, cargo and freight agents, dispatchers, couriers, data entry keyers, computer operators, shipping, receiving, and traffic clerks, word processors and typists, proofreaders, and general office clerks.

"Annual Equal Pay Report for Qualifying Services" means the form found at N.J.A.C. 12:10 Appendix A, incorporated herein by reference.

"Asian" means a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

"Black or African American" means a person having origins in any of the black racial groups of Africa.

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

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"Covered employer" means any employer, regardless of the location of the employer, who enters into a contract with a public body to either provide qualifying services or perform a public work. Relative to contracts for qualifying services, this term shall include any employer who enters into a contract with a public body to provide both goods and qualifying services; which is to say, if any part of a contract between an employer and a public body is to provide qualifying services, that employer is a covered employer. Relative to contracts to perform public work, this term shall also include any subcontractor or lower tier subcontractor of a contractor.

"Craft workers" means individuals who are in positions, most of which are higher-skilled occupations in construction (building trade craft workers and their apprentices). Examples of these types of positions include: boilermakers, brick and stone masons, carpenters, electricians, painters (both construction and maintenance), glaziers, pipelayers, plumbers, pipefitters, and steamfitters, plasterers, roofers, elevator installers, earth drillers, derrick operators, oil and gas rotary drill operators, and blasters and explosives workers. This category also includes occupations related to the installation, maintenance, and part replacement of equipment, machines, and tools, such as: automotive mechanics, aircraft mechanics, and electric and electronic equipment repairers. This category also includes some production occupations that are distinguished by the high degree of skill and precision required to perform them, based on clearly defined task specifications, such as: millwrights, etchers and engravers, tool and die makers, and pattern makers.

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

"Executive/senior level officials and managers" means individuals who plan, direct, and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of services. These executives reside in the highest levels of organizations, in which they plan, direct, or coordinate activities with the support of subordinate executives and staff managers. Examples of these kinds of managers are: chief executive officers, chief operating officers, chief financial officers, line of business heads, presidents or executive vice presidents of functional areas or operating groups, chief information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors, and managing partners.

"First/mid-level officials and managers" means individuals who serve as managers (other than those who serve as executive/senior level officials and managers) including those who oversee and direct the delivery of services or functions at group, regional, or divisional levels of organizations. This level of management receives directions from the executive/senior level management and typically lead major business units. Examples are: first-line managers, team managers, unit managers, operations and production managers, branch managers, administrative services managers, purchasing and transportation managers, storage and distribution managers, call center or customer service managers, technical support managers, and brand or product managers.

"Hispanic or Latino" means a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.

"Hours worked" means "hours worked" as that phrase is defined within N.J.A.C. 12:56-5.

"Laborers and helpers" means individuals who are in positions requiring limited skills and only brief training to perform tasks that require little or no independent judgment. Examples include: production and construction worker helpers, vehicle and equipment cleaners, laborers, freight, stock, and material movers, service station attendants, construction laborers, refuse and recyclable materials collectors, septic tank servicers, and sewer pipe cleaners.

"Native American or Alaska Native" means a person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.

"Native Hawaiian or Pacific Islander" means a person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

"Non-binary" means a person who does not identify as either male or female.

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"Operatives" means individuals in positions, most of which include intermediate skilled occupations and include workers who operate machines or factory-related processing equipment. Most of these occupations do not usually require more than several months of training. Examples include: textile machine workers, laundry and dry cleaning workers, photographic process workers, waving machine operators, [page=539] electrical and electronic equipment assemblers, semiconductor processors, testers, graders, and sorters, bakers, and butchers and other meat, poultry, and fish processing workers. This category also includes occupations of generally intermediate skill levels that are concerned with operating and controlling equipment to facilitate the movement of people or materials, such as: bridge and lock tenders, bus or taxi drivers, industrial truck and tractor (forklift) operators, parking lot attendants, sailors, conveyor operators, and hand packers or packagers.

"Payroll Certification for Public Works Projects" means the form found at N.J.A.C. 12:10 Appendix B, incorporated herein by reference.

"Professionals" means individuals in positions that generally require bachelor and graduate degrees and/or professional certification, such as, but not limited to, accountants, auditors, architects, computer programmers, engineers, lawyers, scientists, and teachers. In some instances, comparable experience, rather than degrees or certifications, may establish a person's qualifications.

"Public body" means the State or any agency or instrumentality of the State.

"Public work" means public work, as that term is defined within N.J.S.A. 34:11-56.26 and which is subject to the provisions of the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. Public work shall not include the provision of goods or products.

"Qualifying services" means the provision of any service to a public body, except for public work.

"Sales workers" means individuals who are in positions that are non-managerial and wholly or primarily involve direct sales. Examples of these types of positions include: advertising sales agents, insurance sales agents, real estate brokers and sales agents, wholesale sales representatives, securities, commodities, and financial services sales agents, telemarketers, demonstrators, retail salespersons, counter and rental clerks, and cashiers.

"Service" means any act performed in exchange for payment, including the provision of professional services, but shall not include the sale of goods or products.

"Service workers" means individuals performing tasks such as food service, cleaning service, personal service, and protective service, where skill may be acquired through formal training, job-related training, or direct experience. Examples of food service positions include: cooks, bartenders, and other food service workers. Examples of personal service positions include: medical assistants and other healthcare support positions, hairdressers, ushers, and transportation attendants. Examples of cleaning service positions include: cleaners, janitors, and porters. Examples of protective service positions include: transit and railroad police and firefighters, guards, private detectives, and investigators.

"Technicians" means individuals in positions that require applied scientific skills, generally obtained by post-secondary education of varying lengths, depending on the particular occupation, recognizing that in some instances additional training, certification, or comparable experience is required. Examples of these types of positions include: drafters, emergency medical technicians, chemical technicians, and broadcast and sound engineering technicians.

"White" means a person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

## **SUBCHAPTER 2. REPORTING REQUIREMENT FOR QUALIFYING SERVICES**

### **12:10-2.1 Form and frequency of reporting; employment snapshot**

- (a) Each covered employer who enters into a contract with a public body to provide qualifying services, shall, on an annual basis, no later than March 31 following the calendar year in which the contract to provide qualifying services became effective, and each March 31 thereafter for the preceding calendar year during which the contract to provide qualifying services remains in effect, submit electronically to the Department (via email or other electronic means prescribed by the Department), using the Annual

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Equal Pay Report for Qualifying Services, the following information with respect to employees performing work in New Jersey:

1. Job category;
2. Sex/gender;
3. Race;
4. Ethnicity;
5. Hours worked; and
6. Compensation.

- (b)** The covered employer shall report all employees employed during a single pay period between October 1 and December 31 of the reporting year (a single pay period snapshot) for the purpose of completing the Annual Equal Pay Report for Qualifying Services.

**12:10-2.2 Establishment**

- (a)** An employer doing business at only one establishment in one location shall complete a single Annual Equal Pay Report for Qualifying Services.
- (b)** A covered employer doing business at more than one establishment shall complete the following:
1. An Annual Equal Pay Report for Qualifying Services covering the principal or headquarters office;
  2. A separate Annual Equal Pay Report for Qualifying Services for each establishment employing 50 or more employees; and
  3. A consolidated Equal Pay Report for Qualifying Services for all establishments employing fewer than 50 employees.
- (c)** For the purpose of this section, the term "establishment" shall mean a single physical location where business is conducted or where services or industrial operations are performed. Units at different physical locations, even though engaged in the same kind of business operation, must be reported as separate establishments.
- (d)** For physically dispersed activities, it is not necessary to list separately each individual site or project, unless it is treated by the employer as a separate legal entity. For these types of activities, the employer shall list as establishments only those relatively permanent main or branch offices that are either directly responsible for supervising such dispersed activities or are the base from which personnel or equipment operate to carry out these activities.
- (e)** Where an employee works from home, he or she shall be reported as if working at the establishment where his or her supervisor is reported to work.

**12:10-2.3 Identification of employees**

- (a)** The covered employer is not required to identify any employee by name. Rather, the covered employer is required to list under the heading, "Number of employees," on the Annual Equal Pay Report for Qualifying Services, the number of employees at the establishment who meet each of the criteria in the succeeding columns entitled: job, demographic, hours, and compensation.
1. For example, where at a given establishment of the covered employer, there are three employees identified with the job category of professional, who are also identified as female (sex), Black or African American (race), Non-Hispanic (ethnicity), exempt working 1,820 hours annually (hours), and in pay band number 9, receiving annually between \$ 101,920 and \$ 128,959 (compensation), the covered employer would place the number "3" in the corresponding box under the first column entitled, "Number of employees."

**12:10-2.4 Job category**

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**(a)** The covered employer shall place employees into one of the following job categories:

1. Executive/senior level officials and managers;
2. First/mid-level officials and managers;
3. Professionals;
4. Technicians;
5. Sales workers;
6. Administrative support workers;
7. Craft workers;
8. Operatives;
9. Laborers and helpers; or
10. Service workers.

**12:10-2.5** Sex, race, and ethnicity

**(a)** The covered employer shall place employees into one of the following sex categories:

1. Male;
2. Female; or
3. Non-binary.

[page=540] **(b)** The covered employer shall place employees into one of the following race categories:

1. Asian;
2. Black or African American;
3. Native Hawaiian or Pacific Islander;
4. American Indian or Native Alaskan;
5. White; or
6. "2 or More Races."

**(c)** The covered employer shall place employees into one of the following ethnicity categories:

1. Hispanic or Latino; or
2. Not Hispanic or Latino.

**(d)** The covered employer shall include within the Annual Equal Pay Report for Qualifying Services information on employees' sex, race, and ethnicity. The employer may not leave any of these three spaces blank on the Annual Equal Pay Report for Qualifying Services.

**(e)** Before the covered employer identifies an employee's sex, race, or ethnicity, the employee shall be given an opportunity to voluntarily self-identify.

**(f)** For the purpose of offering employees the opportunity to voluntarily self-identify sex, race, or ethnicity under (e) above, the covered employer may offer a statement about the voluntary nature of the inquiry, such as the following:

1. The employer is subject to New Jersey reporting requirements for the administration of civil rights laws, rules, and regulations. In order to comply with these requirements, the employer invites employees to voluntarily self-identify their sex, race, and ethnicity. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information

obtained may only be used in accordance with the provisions of applicable laws, rules, and regulations.

- (g) Where an employee declines to voluntarily self-identify sex, race, or ethnicity, the covered employer may use other employment records or visual observations for the purpose of identification.

#### 12:10-2.6 Hours worked

- (a) Where the covered employer does not record hours worked for a particular employee because the employee is an exempt employee under the Federal Fair Labor Standards Act, [29 U.S.C. §§ 201](#) et seq., or the New Jersey Wage and Hour Law, [N.J.S.A. 34:11-56a](#) et seq., the employer may either:
1. Record the actual hours worked for that employee for the purpose of completing the Annual Equal Pay Report for Qualifying Services; or
  2. Presume solely for the purpose of completing the Annual Equal Pay Report for Qualifying Services that if the employee is full-time he or she worked 40 hours per week, and if the employee is part-time he or she worked 20 hours per week.
- (b) Where a particular employee is not an exempt employee under the Federal Fair Labor Standards Act, [29 U.S.C. §§ 201](#) et seq., or the New Jersey Wage and Hour Law, [N.J.S.A. 34:11-56a](#) et seq., when completing the Annual Equal Pay Report for Qualifying Services, the covered employer shall report the actual number of hours worked annually by that employee.

#### 12:10-2.7 Compensation

- (a) For the purpose of completing the Annual Equal Pay Report for Qualifying Services, the covered employer shall consider an employee's annual compensation to be the amount contained within Box #1 of the employee's Internal Revenue Service Form W-2 (which lists the employee's total taxable wages, tips, and other compensation).
- (b) Once the covered employer has established the employee's annual compensation using the method prescribed in (a) above, the covered employer shall report the employee's compensation on the Annual Equal Pay Report for Qualifying Services as within one of the following pay bands:
1. \$ 19,239 and under;
  2. \$ 19,240 - \$ 24,439;
  3. \$ 24,440 - \$ 30,679;
  4. \$ 30,680 - \$ 38,999;
  5. \$ 39,000 - \$ 49,919;
  6. \$ 49,920 - \$ 62,919;
  7. \$ 62,920 - \$ 80,079;
  8. \$ 80,080 - \$ 101,919;
  9. \$ 101,920 - \$ 128,959;
  10. \$ 128,960 - \$ 163,799;
  11. \$ 163,800 - \$ 207,999;
  12. \$ 208,000 and over.

### SUBCHAPTER 3. REPORTING REQUIREMENT FOR PUBLIC WORKS

#### 12:10-3.1 Form and frequency of reporting

- (a) For every employee of the covered employer employed in New Jersey in connection with a contract with a public body to perform any public work for the public body, each covered employer shall, on a weekly basis, submit electronically to the Department (via email or other electronic means prescribed by the

Department), using the Payroll Certification for Public Works Projects, all of the information required to be submitted to the public body through certified payroll records under N.J.S.A. 34:11-56.25 et seq., plus or inclusive of the following:

1. Job title;
2. Occupational category;
3. Sex;
4. Race; and
5. Rate of total compensation.

**12:10-3.2 Job title and occupational category**

- (a) For the purpose of completing the Payroll Certification for Public Works Projects, the term "job title" shall mean the classification of the individual as an apprentice, journeyman, foreman, deputy, or assistant foreman, or the like.
- (b) For the purpose of completing the Payroll Certification for Public Works Projects, the term "occupational category" shall mean the individual's craft or trade; for example: laborer, carpenter, electrician, or mason.

**12:10-3.3 Sex and race**

- (a) The covered employer shall place employees into one of the following sex categories:
1. Male;
  2. Female; or
  3. Non-binary.
- (b) The covered employer shall place employees into one of the following race categories:
1. Asian;
  2. Black or African American;
  3. Native Hawaiian or Pacific Islander;
  4. American Indian or Native Alaskan;
  5. White; or
  6. "2 or More Races."
- (c) The covered employer shall include within the Payroll Certification for Public Works Projects information on employees' sex and race. The employer may not leave either of these spaces blank on the Payroll Certification for Public Works Projects.
- (d) Before the covered employer identifies an employee's sex and race, the employee shall be given an opportunity to voluntarily self-identify.
- (e) For the purpose of offering employees the opportunity to voluntarily self-identify sex and race under (d) above, the covered employer may offer a statement about the voluntary nature of the inquiry, such as the following:
1. The employer is subject to New Jersey reporting requirements for the administration of civil rights laws, rules, and regulations. In order to comply with these requirements, the employer invites employees to voluntarily self-identify their sex, race, and ethnicity. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information obtained may only be used in accordance with the provisions of applicable laws, rules, and regulations.



