



October 16, 2025

Via Email: david.fish@dol.nj.gov
David Fish, Executive Director
Legal and Regulatory Services
NJ Department of Labor and Workforce Development
P.O. Box 110 - 13th Floor
Trenton, New Jersey 08625-0110

Re: Proposed new Rules: N.J.A.C. 12:74

Dear Mr. Fish,

The Employers Association of New Jersey (EANJ) respectfully submits the following comments on behalf of its nearly 500 employer-members regarding the NJ Department of Labor and Workforce Development's (Department or LWD) proposed rules under N.J.A.C. 12:74. Our comments follow the order and numbering of the proposed regulations for clarity.

SUBCHAPTER 2. DEFINITIONS

12:74-2.1 Definitions

The Department is proposing the following definition of "Employer":

"Employer" means any person, company, corporation, firm, labor organization, or association which has 10 or more employees over 20 calendar weeks, whether those employees work inside or outside of New Jersey, and does business, employs persons, or takes applications for employment within New Jersey, including the State, any county or municipality, or any instrumentality thereof. The term "employer" shall include employment agencies. To "take applications for employment within New Jersey" means both that the solicitation occurred in New Jersey and that the physical location of the prospective employment is in whole, or in substantial part, within New Jersey.

The clause "does business, employs persons, or takes applications for employment within New Jersey" is written in the disjunctive, suggesting that satisfying any one of these criteria would trigger coverage. The Department's subsequent clarification applies only to the "takes applications" prong and does not limit or define what it means to "do business" within the State.

This creates ambiguity for employers headquartered outside of New Jersey who conduct limited or periodic business activities within the State. For example, consider a company headquartered in Pennsylvania that occasionally performs work in New Jersey. Because it "does business" in New Jersey and has 10 or more employees, it would appear to meet the definition of "employer." If that company were to hire for a receptionist position based exclusively in Pennsylvania, it is unclear whether it would nevertheless be subject to the proposed posting requirements solely because it

“does business” in New Jersey.

- **Request for clarification:** EAJNJ respectfully request clarification that the law’s posting requirements are intended to apply only to employment activity within New Jersey. The Department may consider revising the disjunctive “or” to “and” to more clearly limit coverage to employers doing business in New Jersey, **and** hiring for positions physically located in whole or in substantial part in New Jersey.

Further, within the Department’s definition of “Employer,” the phrase “To take applications for employment within New Jersey,” is clarified to mean “both that the solicitation occurred in New Jersey and that the physical location of the prospective employment is in whole, or in substantial part, within New Jersey.”

- **Request for clarification:** The positioning of the word “both” suggest that the phrase carries both meanings descriptively, rather than requiring both elements be satisfied for coverage. We respectfully request confirmation that the law’s posting requirements apply only when **both** criteria are satisfied (i.e. solicitation occurs in NJ **and** physical location of job is in whole or substantial part, within NJ). In other words, if a New Jersey-based employer receives applications in New Jersey for a position located entirely outside of New Jersey (e.g., Florida), the employer would not be required to post the salary or salary range for that position. Explicit confirmation that meeting only one of the conditions (e.g., solicitation occurs within NJ but the job is located out of state) does not trigger the posting requirement would provide much-needed clarity for employers and ensure compliance without imposing obligations on out-of-state positions.

The department may consider rephrasing the language as follows to reflect this intent:

“To “take applications for employment within New Jersey” means that an employer solicits applications in New Jersey and the physical location of the prospective employment is in whole, or in substantial part, within New Jersey.”

SUBCHAPTER 3. PROMOTIONS

12:74-3.1 Notification requirements for promotions

The proposal requires employers to make “reasonable efforts” to announce or post promotional opportunities to all employees in the department(s) of the employer to which the promotional opportunity is open. The rule defines “reasonable efforts,” as:

1. Conspicuously posting notification of the promotional opportunity in a place(s) within the employer's workplace(s) that is/are accessible to all employees in the department(s) of the employer to which the promotional opportunity is open; and
2. In the event the employer has an internet site or intranet site for exclusive use by its employees and to which all employees have access, posting notification of the promotional opportunity on the employer's internet site or intranet site.

- **Request for clarification:** We request that the Department clarify that “conspicuous posting” may be satisfied not only by physical postings in the workplace and on company internet/intranet sites that are exclusively available to employees, but also through electronic communications reasonably accessible to the relevant employee population. This should include email distribution to affected department(s), employer messaging platforms (e.g., Teams, Slack), HRIS notifications, and scheduling/timekeeping systems, among others.

Many employers, particularly those with as few as ten employees, may not maintain formal intranet/internet sites for exclusive use of their workers, and instead rely on other electronic communication channels. Limiting compliance to physical posting or intranet/internet sites would impose undue burdens on smaller employers and exclude communication methods routinely used.

- **Additional clarification requested:** EANJ encourages the Department to clarify what is meant by “department(s) of the employer to which the promotional opportunity is open.” The statutory language found at 34:6B-23(1)(a) states, in relevant part:

“An employer shall make reasonable efforts to announce, post, or otherwise make known opportunities for promotion that are advertised internally within the employer or externally on internet-based advertisements, postings, printed flyers, or other similar advertisements to all current employees in the affected department or departments of the employer's business prior to making a promotion decision.”

It is conceivable that a promotion in one department could be open to employees from other departments. Yet, the statute specifically references “affected department or departments,” suggesting a narrower scope. EANJ seeks clarification on whether the intent is to limit notification to employees within the department where the opening exists or to a broader group. Clear guidance on this point is essential to ensure employer compliance without creating unnecessary administrative burdens, while preserving the statute’s intent to promote internal opportunities appropriately.

12:74-3.2 Exemptions from the notification requirements for promotions.

The Department exempts promotions to current employees based on years of experience or performance from the notification requirements and indicates nothing within this subchapter prohibits employers from making a promotion based on an emergent basis due to an unforeseen event.

- **Request for clarification:** EANJ requests that the Department expressly recognize that compliance with existing collective bargaining agreement (CBA) provisions or civil service rules regarding promotions constitutes compliance with this regulation.

SUBCHAPTER 4. NEW JOB AND TRANSFER OPPORTUNITIES

12:74-4.1 Notification content requirements; new job and transfer opportunities

The Department proposes that all new or transfer job opportunities, whether advertised internally

or externally, include:

1. The hourly rate of pay or annual salary, or a range thereof; and
2. A general description of benefits and other compensation programs for which the applicant would be eligible if selected.

Section 2(b) further proposes that any advertised pay range may not exceed 60% above the minimum hourly or annual salary.

- **Request for clarification on Pay Types:** EANJ requests guidance on compliance for positions compensated outside traditional hourly or salaried structures, including per diem, project-based, commission-only, and piece-rate arrangements, among others. Employers should be permitted to disclose pay in the form it is actually offered, which may not be an hourly rate or annualized salary.
- **Objection to 60% Range Limit:** The proposed limitation on pay ranges is arbitrary, rigid, and lacks statutory authority. The Pay Transparency Law, N.J.S.A. 34:6B-23 et seq., mandates disclosure of pay or pay ranges but contains no provision authorizing the Department to impose a maximum range spread. By establishing this cap, the Department would exceed its statutory authority and potentially force employers to compress lawful compensation structures.

The proposed limit fails to account for legitimate business reasons for wider pay ranges, including:

- Market competitiveness;
- Experience and skill levels;
- Differentiation for performance, tenure, or specialized skills.

Employers must retain the ability to advertise actual pay ranges consistent with their compensation structures, except where ranges are governed by collective bargaining agreements or other laws.

EANJ urges the Department to remove this cap or, at minimum, clarify that the rule does not restrict lawful compensation practices.

EANJ appreciates the opportunity to provide these comments and urges the Department to adapt clarifying language to ensure the rules are consistent with statutory intent.

Respectfully submitted,

Amy Vazquez
Vice President
Employers Association of New Jersey