New Jersey’s Minimum Wage Going Up to at Least $15.00

Revised April 2019

Overview

As a result of amendments to New Jersey’s Wage and Hour Law,¹ New Jersey’s $8.85 minimum wage will increase gradually to at least $15 an hour, as follows:

- By January 1, 2024, for (a) employees of employers with six or more employees (“large employers”) and (b) employees who customarily and regularly receive gratuities or tips.

  The first increase, to $10.00 an hour, goes into effect on July 1, 2019. The second increase, to $11.00 an hour, goes into effect on January 1, 2020.

- By January 1, 2026, for (a) employees of employers with fewer than six employees (“small employers”) and (b) employees of large and small employers engaged in seasonal employment. This slower rate of increase in the minimum wage is not applicable to employees who customarily and regularly receive gratuities or tips.

  The first increase, to $10.30 an hour, goes into effect on January 1, 2020.

- By January 1, 2027, for certain employees of agricultural employers.

  The first increase, to $10.30 an hour, goes into effect on January 1, 2020.

In addition, commencing on January 1, 2020, all employers will be permitted to pay a training wage to employees who are enrolled in certain training programs. The training

¹ The amendments are set forth in Public Law 2019, Chapter 32, which is available at https://www.njleg.state.nj.us/2018/Bills/AL19/32_.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).
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.

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 2019 amendments to the Wage and Hour Law.

**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:

- As of July 1, 2019: $10.00
- As of January 1, 2020: at least $11.00
- As of January 1, 2021: at least $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)\(^2\)
- 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

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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 employers with fewer than six employees (“small employers”)

3 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).

It is anticipated that the New Jersey Department of Labor and Workforce Development (NJDLWD) will issue guidance that will explain 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. 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.

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 U.S. Department of Labor’s regulations 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 (“Counting employees for determining coverage”), at https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=d178a2522c85f1f401ed3f3740984fed&rgn=div5&view=text&node=29:3.1.1.3.54&idno=29. 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.” It is possible that the NJDLWD might adopt a similar payroll standard for purposes of determining whether an employer is a small employer.

The regulations of the New Jersey Division on Civil Rights (NJDCR) do not address this issue under the New Jersey Family Leave Act.
“seasonal employment”4 will be as follows:

- As of July 1, 2019: $8.85 (no change from the current minimum wage)
- As of January 1, 2020: at least $10.30
- As of January 1, 2021: at least $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 per hour and the minimum wage in effect in 2026 for employees of large employers

4 “Seasonal employment” is defined as:

[(1)] employment 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.

N.J.S.A. 34:11-56a1(n).

“Seasonal employer” is defined as:

[(1) An] 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).
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 per hour 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**

Employees of small employers and employees of employers engaged in seasonal employment who customarily and regularly receive gratuities or tips are to be treated as if they are employed by large employers for minimum wage and overtime purposes. Their employers are entitled to a fixed credit against the hourly minimum wage for the gratuities or tips received by the employees. The amount of the credit is scheduled to increase in certain years.

**Special Rules for Agricultural Employees**

Agricultural employees who are paid on a piece-rate or regular hourly rate basis 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.

**New Jersey Department of Labor and Workforce Development’s Minimum Wage Chart**

The New Jersey Department of Labor and Workforce Development (NJDLWD) has summarized the changes in the minimum wage in the following chart.5

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5 The chart and accompanying footnote are adapted from [https://nj.gov/labor/forms_pdfs/wagehour/minimumwage_postcard.pdf](https://nj.gov/labor/forms_pdfs/wagehour/minimumwage_postcard.pdf).
<table>
<thead>
<tr>
<th>Date</th>
<th>Large Employers</th>
<th>Small &amp; Seasonal Employers</th>
<th>Agricultural Employers</th>
<th>Required Cash Wage for Employees Who Receive Tips or Gratuities*</th>
</tr>
</thead>
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<td>$8.85</td>
<td>$8.85</td>
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<td>$15.00</td>
<td>TBD</td>
</tr>
</tbody>
</table>

* Cash wage plus tips and/or gratuities must equal the large employer minimum wage, even if the employees are employed by a small employer or employers engaged in “seasonal employment.” “TBD” means “to be determined.”

**The Minimum Wage Potentially Could Be Higher**

The minimum wage for employees could be higher if one of 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 the previous one-year period. If the increase required by the Constitution exceeds a scheduled increase for the same year, then the minimum wage would increase by the higher amount.

   6 Section 23 of Article I of the [New Jersey Constitution](https://www.nj.gov/law/reference/constitutions.html) 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.
2. The federal minimum wage, which has been $7.25 since 2009, is increased to an amount that exceeds the 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 dollar amounts listed in the schedules above.

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 or (b) its own employees.7

New Training Minimum Wage Established

Commencing on January 1, 2020, an employer will be permitted to pay a “training wage,” which must not be less than 90% of the large employer minimum wage, to an employee who is enrolled in an established employer on-the-job or other training program 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 an 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.8

7 In 2016, the mayor of Jersey City issued an executive order setting the city’s minimum wage for certain employees at $15.00 an hour. See Jersey City, NJ Executive Order 2016-008 (July 5, 2016), at https://www.jerseycitynj.gov/CityHall/MayorFulop/executiveorders.

8 The new 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
**New Corporation Business Tax Credit Established for Employers of Employees with Impairments**

The new law creates a new credit against the New Jersey corporation business tax (CBT) for employers (including nonprofits) of “employees with impairments.” According to the new law, “the purpose of the program is to provide tax credits to [those] employers to help to offset the cost to the employer[s] of any wage increases for those employees caused by the [new law], including the cost to the employer[s] of corresponding increases in payroll taxes that the employer[s] paid on those workers’ wages.”

The text of the new law with respect to this tax credit is somewhat ambiguous. Moreover, because nonprofits normally are exempt from paying the New Jersey CBT, 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.

- 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).

9 “Employee with an impairment” is defined as:

[A]n employee earning at least the minimum wage on [February 4, 2019 (i.e., $8.85)] 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.


10 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).
the new tax credit might not have any significance to nonprofits. Hopefully, the NJDLWD and the New Jersey Division of Taxation will issue guidance about which organizations are eligible to apply for the tax credit.

**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 version are made available at [https://nj.gov/labor/lwdhome/content/employerpacketforms.html](https://nj.gov/labor/lwdhome/content/employerpacketforms.html).

**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.11


In 2016, the DOL adopted an even higher required minimum weekly salary of $913 (equivalent to $47,476 annually) and other changes to its “white collar” wage-hour regulations. However, a federal court issued a preliminary injunction blocking implementation of nearly all of the 2016 revisions. Pro Bono Partnership published a two-part article, [*The U.S. Department of Labor’s Revised White Collar Regulations*,](https://www.probonopartner.org/publications/u-s-department-labors-revised-white-collar-regulations-overview-dols-final-rule-impact-nonprofits) that explained the 2016 changes and provided strategies for nonprofit compliance. See **Part I: Overview of the DOL’s 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](https://www.probonopartner.org/publications/u-s-department-labors-revised-white-collar-regulations-overview-dols-final-rule-impact-nonprofits), and **Part II: Considerations and**
• 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.  

• Check to see if the NJDLWD has revised the Wage and Hour Law Abstract when 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 from the Pro Bono Partnership, at (973) 240-6955.


If and when the required minimum weekly salary is increased from $455, Pro Bono Partnership will update the two-part article.


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 New Jersey minimum wage rate.\(^{13}\)

2. Part-time employees primarily engaged in the care and tending of children in the employer’s home.\(^ {14}\)

3. Salespersons of motor vehicles.\(^ {15}\)

4. Persons under the age of 18,\(^ {16}\) 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;\(^ {17}\)

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\(^ {13}\) N.J.S.A. 34:11-56a4(b)(3); N.J.A.C. 12:56-3.2(a)(1).

\(^ {14}\) N.J.S.A. 34:11-56a4(a); N.J.A.C. 12:56-3.2(a)(4).

\(^ {15}\) N.J.S.A. 34:11-56a4(a); N.J.A.C. 12:56-3.2(a)(3).

\(^ {16}\) N.J.S.A. 34:11-56a4; N.J.A.C. 12:56-3.2(a)(5). 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://nj.gov/labor/wagehour/content/child_labor.html](https://nj.gov/labor/wagehour/content/child_labor.html) and [https://nj.gov/labor/wagehour/content/childlabor_PubPosters.html](https://nj.gov/labor/wagehour/content/childlabor_PubPosters.html).

\(^ {17}\) N.J.S.A. 34:11-56a4(a) and N.J.S.A. 34:2-21.15.
b. a minor who is employed in:

   (i) first processing of farm products occupations,\(^{18}\)

   (ii) hotel and motel occupations,\(^{19}\) or

   (iii) food service (restaurant) occupations,\(^{20}\) or

c. a minor who is covered by one of the “Wage Orders for Minors”,\(^{21}\) which cover employment in:

   (i) mercantile (retail) occupations,\(^{22}\)

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\(^{18}\) N.J.A.C. 12:56-3.2(a)(5) and N.J.A.C. 12:56-11.1 to 11.3; N.J.S.A. 34:11-56a30; N.J.S.A. 34:11-56a16. \\

\(^{19}\) N.J.A.C. 12:56-3.2(a)(5) and N.J.A.C. 12:56-13.1 to 13.8; N.J.S.A. 34:11-56a30; N.J.S.A. 34:11-56a16. \\

\(^{20}\) N.J.A.C. 12:56-3.2(a)(5) and N.J.A.C. 12:56-14.1 to 14.8; N.J.S.A. 34:11-56a30; N.J.S.A. 34:11-56a16. 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, banquet, 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 notes: “Certain places are not required to pay minimum wage. *** However, jobs related to food service in any of those places must pay the minimum wage. For example, [a minor working] in a nursing home can be paid less than the minimum wage, however, [if the minor is working in the] dining room [of the nursing home, then the minor] must be paid minimum wage.” NJDLWD, *Rate of Pay for Young Workers*, at [https://nj.gov/labor/wagehour/content/childlabor_RateofPay.html](https://nj.gov/labor/wagehour/content/childlabor_RateofPay.html). \\

\(^{21}\) N.J.A.C. 12:56-3.2(a)(5) and N.J.A.C. 12:57; N.J.S.A. 34:11-56a30; N.J.S.A. 34:11-56a16. \\

\(^{22}\) N.J.A.C. 12:57-3.1 to 3.13. 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
(ii) beauty culture occupations,\textsuperscript{23}

(iii) laundry, cleaning, and dying occupations,\textsuperscript{24} and

(iv) light manufacturing and apparel occupations.\textsuperscript{25}

5. Outside salespersons.\textsuperscript{26}

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.\textsuperscript{27}

7. Employees of summer camps, conferences, and retreats operated by a nonprofit or religious corporation or association, during the months of June, July, August, and September.\textsuperscript{28}

8. Unpaid student learners (interns) enrolled in a school-to-work program at for profit and not-for-profit organizations.\textsuperscript{29}

\textsuperscript{4} Does not mean work performed in the manufacturing of merchandise which is sold at wholesale by the manufacturer.

\textsuperscript{23} N.J.A.C. 12:57-4.1 to 4.11.

\textsuperscript{24} N.J.A.C. 12:57-5.1 to 5.11.

\textsuperscript{25} N.J.A.C. 12:57-6.1 to 6.8.

\textsuperscript{26} N.J.S.A. 34:11-56a4(a); N.J.A.C. 12:56-3.2(a)(2).

\textsuperscript{27} N.J.S.A. 34:11-56a4(a).

\textsuperscript{28} N.J.S.A. 34:11-56a4.1; N.J.A.C. 12:56-3.2(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.”).

\textsuperscript{29} N.J.A.C. 12:56-18.1 to 18.2. The NJDLWD’s regulations set forth the appropriate definitions and conditions necessary to allow for unpaid activities of student learners.
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.\textsuperscript{30}

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 wage.\textsuperscript{31}

\textsuperscript{30} N.J.S.A. 34:11-56a17; N.J.A.C. 12:56-9.1 to 9.5. The NJDLWD repealed its regulations relating to learners, apprentices, and students (N.J.A.C. 12:56-10). The NJDLWD has an “Application to Pay Less Than Minimum Wage to a Disabled Person” (Form MW-151), at https://www.nj.gov/labor/forms_pdfs/lsse/mw-151.pdf, and an Application for a Sheltered Workshop Certificate (Form MW-244), at https://www.nj.gov/labor/forms_pdfs/lsse/mw-244.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).

\textsuperscript{31} N.J.S.A. 34:11-56a4(g).