

# 55 N.J.R. 1137(a)

VOLUME 55, ISSUE 11, JUNE 5, 2023

## RULE PROPOSALS

### Reporter

55 N.J.R. 1137(a)

***NJ - New Jersey Register > 2023 > JUNE > JUNE 5, 2023 > RULE PROPOSALS > LABOR AND WORKFORCE DEVELOPMENT -- PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH***

## 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 > PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH

## Administrative Code Citation

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Proposed New Rules: N.J.A.C. 12:101

## Text

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**Requiring Hotel Employers to Provide for the Safety of Hotel Employees Through the Provision of Panic Devices and Other Measures**

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

Authority: N.J.S.A. 29:4-12.

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

Proposal Number: PRN 2023-043.

Submit written comments by August 4, 2023, to:

David Fish, Executive Director  
Legal and Regulatory Services  
New Jersey Department of Labor and Workforce Development  
PO Box 110-13th Floor  
Trenton, New Jersey 08625-0110  
Fax to: (609) 292-8246  
  
Email: [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. 12:101 to implement N.J.S.A. 29:4-9 through 12 (the Act), which empowers the Commissioner of the Department (Commissioner) to protect hotel employees from violent acts, including sexual assault, sexual harassment, or other inappropriate or criminal conduct to which they may be subjected while performing their duties, through the requirement that hotel employers provide such employees with panic devices, notify employees of such incidents, keep a record of and report such incidents to authorities, reassign employees away from guests accused of such incidents, and educate employees and guests on the use and presence of panic devices.

Proposed new N.J.A.C. 12:101-1.1 would set forth the purpose and scope of the chapter.

Proposed new N.J.A.C. 12:101-2.1 would include definitions of words and terms used throughout the chapter.

Proposed new N.J.A.C. 12:101-3.1 and 3.2 would address the obligations of a hotel employer to provide panic devices to hotel employees, to record and report incidents, to notify and educate hotel employees on safety, and to notify guests of the hotel policy on panic devices.

Proposed new N.J.A.C. 12:101-4.1 and 4.2 would address enforcement of the Act and this chapter by the Department, including establishment of the investigatory powers of the Commissioner, and his or her authorized representatives, in their enforcement of the Act and this chapter.

Proposed new N.J.A.C. 12:101-5.1 and 5.2 would address penalties and hearings should any violations occur.

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 vast majority of the proposed new rules either mirror the Act or are necessitated by the Act. Regarding the social impact of the Act, N.J.S.A. 29:4-9 indicates that the purpose of the Act is to address the unique risks posed by hotel work, where hotel employees are particularly vulnerable when working alone and in isolation in hotel guest rooms, which sometimes may be occupied. This solitary work places them at considerable risk of an assault, including sexual assault or harassment. Inasmuch as the proposed new rules do implement the Act, they would,

[page=1138] by extension, serve the same purpose and have the same social impact as the Act. The proposed new rules would also have a positive social impact in that they would establish a regulatory framework for the imposition of penalties for violations pursuant to the Act and for the processing of requests for hearings after a violation of the Act has occurred, thereby informing employers of the risks of noncompliance in advance of penalties being imposed and enabling the Department to effectively enforce the law.

### **Economic Impact**

As indicated in the Social Impact above, the vast majority of the proposed new rules either mirror the Act or are necessitated by the Act. Therefore, whatever negative economic impact might be felt would derive in the first instance from the Act, not the proposed new rules. That portion of the new rules that address penalties for violations of the Act would, of course, have a negative economic impact upon those persons who run afoul of the Act. As to the remainder of the new rules, it is the Department's belief that they would have a positive economic impact for workers by protecting the lives and livelihoods of many hotel employees who are marginalized members of society with limited or inadequate means to support themselves and their families, and who may feel intimidated to report any inappropriate conduct or criminal conduct to which they may be subjected, for fear of repercussions or retaliation from their employers. It is the Department's hope that the proposed new rules will provide such employees with the adequate support they need to feel safer and become safer in their jobs, thereby enabling them to earn a living. From the standpoint of feasibility in implementing panic buttons to protect employees, the impact upon employers is viewed by the Department as minimal and tolerable as such devices are readily available for sale.

### **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 not impact the agriculture industry in any way because the Act is directed at and limited to hotel employers and hotel employees within the hospitality industry, an industry distinguishable and separate from the agriculture industry. Neither the Act, nor the proposed new rules, pertain to agriculture.

### **Regulatory Flexibility Analysis**

Pursuant to N.J.S.A. 52:14B-17 of the New Jersey Regulatory Flexibility Act, the term "small business" is defined to mean "any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees." Pursuant to the Act, N.J.S.A. 29:4-10 exempts from the definition of the term "hotel" businesses containing less than 100 guest rooms, which provides relief on its face to many small businesses that own and operate smaller hotels with under 100 guest rooms. However, it is conceivable that an employer with less than 100 full-time employees could be operating a hotel with more than 100 guest rooms, thus affecting some small businesses that would be required to provide panic devices and take other measures to protect housekeeping employees pursuant to the Act.

The proposed new rules reflect a uniform application of the Act for all employers operating hotels of 100 or more guest rooms. Pursuant to the Act, any such employer has obligations spelled out by statute to protect its employees, violations that involve penalties ranging from up to \$ 5,000 for a first violation, and up to \$ 10,000 for each subsequent violation. 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, nor would they have any impact on the affordability of housing in the State. The basis for this finding is that the proposed new rules pertain to the obligations of hotel employers to provide for the safety of hotel employees. 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, pursuant to the State Development and Redevelopment Plan. The basis for this finding is that the proposed new rules pertain to the obligations of hotel employers to provide for the safety of hotel employees. 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 rules follows:

#### CHAPTER 101

#### SAFETY STANDARDS FOR HOTEL EMPLOYEES

##### SUBCHAPTER 1. GENERAL PROVISIONS

###### 12:101-1.1 Purpose and scope

(a) The purpose of this chapter is to implement N.J.S.A. 29:4-9 through 12, which requires, among other things, that hotel employers in the hospitality industry provide hotel employees with panic devices for safety purposes, in order to protect such workers from sexual assault and other violent acts.

(b) This chapter applies to "hotel employers" and "hotel employees."

##### SUBCHAPTER 2. DEFINITIONS

###### 12:101-2.1 Definitions

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

"Act" means N.J.S.A. 29:4-9 through 12.

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

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

"Guest room" means any room made available by a hotel for overnight occupancy by guests.

"Hotel" means any hotel, inn, boarding house, motel, or other establishment whose proprietor offers and accepts payment for rooms, sleeping accommodations, or board and lodging, and retains the right of access to, and control of, the premises that are let, which contains at least 100 guest rooms.

"Hotel employee" or "employee" means any natural person who works full-time or part-time performing housekeeping or room service duties at a hotel for, or pursuant to, the direction of the hotel employer or any subcontractor of the hotel employer for wages or salary or remuneration of any type pursuant to a contract or subcontract of employment.

"Hotel employer" or "employer" mean any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary staffing agency, employs or exercises control over the wages, hours, or working conditions of any person employed in furtherance of the hotel's provision of lodging and other related services for the public.

"Large font" means at least 14-point font.

"Panic device" means a two-way radio or other electronic device that is kept on an employee's person when the employee is in a guest room, that permits an employee to communicate with, or otherwise effectively summon immediate on-scene assistance from, a security officer, manager or supervisor, or other appropriate hotel staff member.

[page=1139] SUBCHAPTER 3. PROVISION OF PANIC DEVICE; EMPLOYER RESPONSIBILITIES

12:101-3.1 Provision and use of panic device

(a) A hotel employer must provide a panic device to each hotel employee assigned to work in a guest room without any other employees present.

(b) The panic device at (a) above must be provided by the hotel employer at no cost to the hotel employee.

(c) A hotel employee may use the panic device if the employee believes there is an ongoing crime, or immediate threat of assault or harassment, or other emergency in the employee's presence.

(d) The hotel employee must be permitted, without retaliation by the hotel employer, to cease work and leave the immediate area of perceived danger or inappropriate conduct to await the arrival of assistance.

(e) This section shall not apply if the terms of a collective bargaining agreement address the issuance of panic devices to hotel employees or otherwise address safety and reporting procedures for hotel employees working in guest rooms without any other employees present.

(f) Upon a hotel employee activating a panic device, an appropriate staff member of the hotel, manager or supervisor, or security officer shall respond promptly to the location of the hotel employee.

12:101-3.2 Additional safety responsibilities of the hotel employer

(a) A hotel employer must do the following:

1. Keep a record of the accusations it receives that a guest has committed an act of violence, including sexual assault, sexual harassment, or other inappropriate conduct toward a hotel employee, and maintain the name of the guest so accused on the list for a period of five years from the date of the incident;

2. Report any incident involving alleged criminal conduct by a guest or other person to the appropriate law enforcement agency, so that the law enforcement agency may make a determination as to whether to pursue criminal charges and cooperate with any investigation undertaken by the law enforcement agency;

3. Notify hotel employees who are assigned to housekeeping or room service duties of the room in which an alleged incident occurred of the presence and location of any guest named on the list pursuant to (a)1 above;

4. Provide hotel employees, other than the hotel employee who activated the panic device, the option of either servicing the guest room of a guest on the list with a partner hotel employee or opting out of servicing the room for the duration of the guest's stay at the hotel;

5. Ensure that the hotel employee who activated the panic device is immediately reassigned to a different work area away from the guest room of the guest for the duration of the guest's stay at the hotel;

6. Develop and maintain a program, which may include written information, to educate hotel employees regarding the use of panic devices and the rights of hotel employees in the event that they activate their devices, and to encourage hotel employees to activate panic devices, when appropriate; and

7. Advise hotel guests using one or both of the following methods that the hotel provides panic devices to hotel employees:

i. Require hotel guests to acknowledge the policy as part of the hotel terms and conditions upon checking in to the hotel; or

ii. Place signs on the interior of guest room doors in a prominent location and in large font, detailing the panic device policy and the rights of hotel employees.

(b) If an accused guest is convicted of a crime in connection with an incident brought to the attention of the hotel employer by the pressing of a panic device or is otherwise reported by a hotel employee, the hotel may decline to provide occupancy to the guest.

(c) Following an incident where a hotel employee uses their panic device, employers are encouraged to refer employee(s) to the Department of Labor and Workforce Development website, <http://www.nj.gov/labor/worker-protections/myworkrights/domesticviolence.shtml#resources>, to access victim support services.

#### SUBCHAPTER 4. ENFORCEMENT; INSPECTION

##### 12:101-4.1 Enforcement

The Commissioner and his or her authorized representatives shall enforce and administer the Act and this chapter, and the Commissioner and his or her authorized representatives are empowered to investigate alleged violations of the Act.

##### 12:101-4.2 Inspection

(a) The Commissioner and his or her authorized representatives are empowered to enter and inspect such places of business, question such employees and investigate such facts, conditions, or matters, as they may deem appropriate to determine whether any person has violated any provision of the Act or this chapter, or which may aid in the enforcement of the provisions of the Act or this chapter, including, but not limited to, demanding production, upon request, by any hotel employer of any or all of the records required to be kept pursuant to the Act or this chapter.

(b) The Commissioner and his or her authorized representatives shall have the power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, records, and testimony, and to take depositions and affidavits in any proceeding before the Commissioner.

(c) If a person fails to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter that he or she may be lawfully questioned, it shall be the duty of the Superior Court, on application by the Commissioner, to compel obedience by proceedings for contempt, as in the case of disobedience with the requirements of a subpoena issued from such court or a refusal to testify in such court.

#### SUBCHAPTER 5. ADMINISTRATIVE PENALTIES; HEARINGS

12:101-5.1 Penalties

(a) When it is determined by the Commissioner that a hotel employer has violated any provision of the Act or this chapter, the Commissioner may assess and collect administrative penalties in the amounts that follow:

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

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification of the violation, the amount of the penalty, and an opportunity to request a formal hearing.

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violation(s):

1. The seriousness of the violation;
2. The past history of previous violations by the employer;
3. The good faith of the employer;
4. The size of the employer's business; and
5. Any other factors that the Commissioner deems to be appropriate in determining the amount of penalty assessed.

12:101-5.2 Hearings

(a) When the Commissioner assesses an administrative penalty pursuant to N.J.A.C. 12:101-5.1, the employer shall have the right to request a hearing pursuant to (b) below.

(b) A request for a formal hearing must be received within 15 calendar days following receipt of the notice of the penalty assessment

(c) No administrative penalty shall be levied pursuant to this chapter, unless the alleged violator is provided with:

1. A notification of the violation;
2. The amount of the penalty to be imposed; and
3. An opportunity to request a formal hearing.

(d) If a hearing is not requested within the 15 calendar days following service, the notice of violation and penalty shall become a final order of the Commissioner for the amount of the penalty indicated in the notice. Such amount may be collected by the Department pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(e) All hearing requests shall be deemed to automatically include a request for a settlement conference with the Department, which shall be scheduled and conducted by the Department within 30 days of the request [page=1140] for a hearing, if the Department determines that a settlement conference would be productive and useful under the circumstances. The settlement conference may be conducted in-person or electronically, as determined by the Department to accommodate the needs of both parties.

(f) If a settlement is achieved, the alleged violator shall pay the agreed upon settlement amount in accordance with (g) below. If a settlement conference fails to produce a settlement or did not occur, the request for a hearing shall be transmitted to the Office of Administrative Law (OAL) for a hearing to be conducted pursuant to the

Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(g) Payment of the penalty shall be due when the final agency determination is issued, when notification becomes the final decision because no appeal has been filed, or the agreed upon date when payment is due pursuant to a settlement achieved at a settlement conference. All payments shall be made payable to the Department of Labor and Workforce Development in the form of a certified check or money order, or any other form that the Department deems suitable.

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