

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
LABOR STANDARDS DIVISION**

Public Notice of Proposed Rule-Making

The Labor Standards Division within the Department of Labor and Training, under the authority granted by Chapter 14 of Title 28 of the General Laws of Rhode Island, 1956, as amended, hereby gives notice of its intent to adopt general and special rules and regulations under Chapter 35 of Title 42 of the General Laws of Rhode Island as amended. The purpose of this adoption is to interpret the amendments under R.I. Gen. Laws § 28-14-2.2, allowing employers to petition the director of labor and training for permission to pay wages less frequently than weekly and explains the petition process. The Labor Standards Division proposes the following adoption:

October 2013 (proposed)

**RULES AND REGULATIONS RELATING TO EMPLOYER EXEMPTIONS
FROM WEEKLY PAY REQUIREMENTS UNDER R.I. GEN. LAWS § 28-14-2.2**

1. Any employer that has an average payroll that exceeds two hundred percent (200%) of the state minimum wage as defined in R.I. Gen. Laws § 28-12-3 may petition the Director to pay wages less than weekly so long as the employer makes payment of wages regularly and on a predesignated date no less than twice a month, provides proof of a surety bond or other sufficient demonstration of security in the amount of the highest payroll exposure in the preceding year for the employees subject to the petition and if the involved employees are subject to collective bargaining, the employer provides the written consent of the collective bargaining representative for all involved employees. For purposes of these regulations, “other sufficient demonstration of security” shall mean a letter of credit from a financial institution.
2. Any employer whose average payroll is less than two hundred percent (200%) of the state minimum wage as defined in R.I. Gen. Laws § 28-13-3 and demonstrates good cause may petition the Director to pay wages less than weekly so long as the employer has provided the Department with the following information: (i) the method by which wages will be paid; (ii) the employer’s designated payday(s); (iii) the job classification of the employees involved; (iv) the salary range of the employees involved; and (v) the employer’s federal identification number. In addition, the employer must make payment of wages regularly on a predesignated date no less than twice per month, have no history of wage and hour violations, provide proof of a surety bond or other sufficient demonstration of security in the amount of the highest biweekly payroll exposure in the preceding year for the employees subject to the petition, and if the involved employees are subject to collective bargaining, the employer shall provide the Department with the written consent of the collective bargaining representative for all involved employees. For purposes of these

regulations, “other sufficient demonstration of security” shall mean a letter of credit from a financial institution.

3. Any employer who petitions the Director under either Rule 1 or Rule 2 above, must submit a completed, signed and notarized application along with the requested supporting documentation. The application may be accessed through the Department’s website. All applications shall contain original signatures.
4. Upon receipt of the above-referenced application, the Director shall either grant the petition, deny the petition, or request additional information. An employer, whose application for exemption has been denied, may, within ten (10) days from the date of the Director’s notice of denial of the petition, request an appeal hearing before the Director or the Director’s designee.
5. If the Director approves the petition, the permission to pay wages on less than a weekly basis is valid for two (2) years from the date of approval. Permission to pay less than weekly shall not be valid until employer receives written approval from the Department.
6. If the Director approves the petition, the employer must notify the affected employees subject to the petition of the pay change fourteen (14) calendar days in advance of the pay change.
7. By signing the application, the employer agrees to continued compliance with the requirements of R.I. Gen. Laws § 28-14-2.2 and these regulations. Employer shall have the burden of notifying the Department, in writing within thirty (30) days, if circumstances supporting approval no longer apply.
8. Recertification: any employer who has received approval to pay less than weekly, must recertify every two (2) years from the date of prior approval. Such recertification must be performed through the submission of a recertification application available through the Department’s website. All recertification applications must be submitted no later than sixty (60) days prior to expiration of current approval/certification. Upon successful completion, submission and approval of the recertification application, employer shall receive written notice from the Department of employer’s approval. If approval is not granted prior to expiration of current approval/certification period, employer shall not be eligible to pay less than weekly.
9. The obligation to obtain a surety bond or “other sufficient demonstration of security” referenced in these regulations is perpetual in nature and must be maintained and satisfied for the duration of the exemption from the weekly pay requirement, including any and all exemptions pursuant to recertification approvals.

10. Any employer found in violation of R.I. Gen. Laws § 28-14-2.2 and/or these regulations shall, after notice and hearing, be subject to rescission of the employer's exemption from the weekly pay requirement for a period of one (1) year from the date of final administrative determination. Subsequent violations shall be subject to rescission for a period of two (2) years from the date of final administrative determination.
11. All appeals of final administrative determinations hereunder shall be subject to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-15.
12. For purposes of these regulations, "Director" refers to the Director of the Department of Labor and Training.
13. For purposes of these regulations, "Department" refers to the Department of Labor and Training.

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A copy of the proposed regulations will be available for examination at the Rhode Island Department of Labor & Training, 1511 Pontiac Avenue, Cranston, RI 02920 between the hours of 9:00 a.m. and 3:00 p.m. Electronic copies of the proposed regulations will also be available on the Rhode Island Department of Labor and Training's website at the following address: <http://www.dlt.state.ri.us/>.

In the development of the proposed rule consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small businesses. Based on available information, no significant economic impact was identified nor are there any alternative approaches, duplications or overlaps with other state regulations.

All interested parties are invited to submit written or oral comments concerning the proposed regulations and will be accepted within twenty (20) days of the date of publication of this notice. In accordance with Rhode Island General Laws, Section 42-35-3, an oral hearing on these proposed amendments will be granted if requested by twenty-five (25) persons or a governmental subdivision or agency, or by an association having not less than twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of the date of publication of this notice. Such input or requests should be addressed to Joseph Degnan, Assistant Director, Department of Labor and Training, 1511 Pontiac Avenue, Cranston, RI 02920. If the above-cited requests are received, an oral hearing will be conducted on Friday, November 29th, 2013 at 2:00 PM at the RI Department of Labor and Training, Building 73-1, 1511 Pontiac Avenue, Cranston, RI 02920.