

Employment Counseling & Litigation

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New Jersey at the Forefront: The State Enacts Broad Pay Equity Law

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What You Need To Know:

- The New Jersey governor has signed into law the Diane B. Allen Equal Pay Act, which makes sweeping changes to the New Jersey Law Against Discrimination.
- The act's pay equity provisions provide protections to *all* protected classes and offer potentially six years of back pay and treble (3x) damages on a pay equity claim.
- The act becomes effective July 1, 2018.

On April 24, 2018, New Jersey Gov. Phil Murphy signed into law the Diane B. Allen Equal Pay Act, which has been hailed as the most sweeping equal pay legislation in the nation. The act goes into effect on July 1, 2018 and includes rigorous protections for New Jersey employees aimed at curbing pay equity violations.

Overview

The act amends the New Jersey Law Against Discrimination (NJLAD) to prohibit employers from paying employees of a *protected class*—not limited to sex—a rate of compensation (including benefits) less than the rate paid to other employees not members of the class for “substantially similar” work, when viewed as a composite of skill, effort, and responsibility. For purposes of the act, protected classes include race, creed, color, national origin, nationality, ancestry, age, marital, civil union or domestic partnership status, affectional or sexual orientation, genetic information, pregnancy, sex, gender identity or expression, disability, atypical hereditary cellular or blood trait, and liability for service in the armed forces.

The act provides limited exceptions in which an employer may pay a different rate of compensation, including if the employer demonstrates that the differential is based on a seniority or merit system, or if the employer demonstrates *all* of the following:

- The differential is based on one or more legitimate, bona fide factors other than the characteristics of members of the protected class (such as training, education, experience, or the quantity or quality of production).
- The factor or factors are not based on, and do not perpetuate, a compensation differential based on sex or any other characteristic of members of a protected class.
- Each of the factors is applied reasonably.
- One or more of the factors account for the entire wage differential.
- The factor or factors are job-related with respect to the position and based on business necessity, which will not apply if it is demonstrated that there are alternative business practices that would serve the same business purpose without producing the wage differential.

Employers who are paying a rate of compensation in violation of the act may not reduce rates of compensation of higher-paid employees to attempt to comply with the act. Comparisons of wage rates are to be based on wage rates in *all* of an employer's operations or facilities.

The act also imposes new reporting requirements, related to compensation, on employers that contract with public entities.

Other Amendments

Not insignificantly, the act makes it an unlawful employment practice to require employees or prospective employees to consent to a shortened statute of limitations or to waive any of the protections provided by NJLAD, which on its face is not limited to pay equity.

Additionally, new provisions expand existing anti-retaliation provisions in NJLAD to, among other things, prohibit reprisals against employees for discussing with or disclosing to counsel and/or governmental agencies information regarding compensation and benefits. Employers also may not require employees or prospective employees, as a condition of employment, to waive or agree not to make such disclosures.

Takeaways

The implications of New Jersey's new law have the potential to be far-reaching. Not only does the act provide pay protections for employees of all protected classes—in addition to sex—under NJLAD, but it also places a significant obligation on employers with its “substantially similar” work standard.

The act provides that an unlawful employment practice occurs each occasion an individual receives compensation that results, in whole or in part, from a discriminatory decision. The act also contains provisions pursuant to which it is possible an employee can obtain up to six years of back pay on a pay equity claim. If a jury determines that an employer violated the equal pay or certain anti-retaliation provisions, the judge *must* award treble damages to the employee.

Employers in New Jersey should review actual compensation to identify any pay disparities among individuals performing “substantially similar” work and to ensure any such disparities are justified under the act, as well as review their compensation policies to ensure compliance with the act. We at Lowenstein Sandler would be pleased to assist you as needed and are available to answer any questions you may have.

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