



Governor Christie Conditionally Vetoes Equal Pay Bill

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A recently vetoed bill regarding equal pay should prompt New Jersey employers to evaluate how they compensate their employees based on gender.

On May 2, 2016, Governor Chris Christie conditionally vetoed a bill designed to enhance unequal pay claims under the New Jersey Law Against Discrimination. Senate Bill 992 (the "Bill") expressly bans unequal pay among sexes for jobs that are "substantially similar" in terms of skill, effort and responsibility. If enacted, the Bill would allow an employer to pay different rates of compensation to employees for substantially similar work only if the employer can demonstrate a seniority or merit system in place or, alternatively, each of the following:

- (1) the pay differential is based on one or more legitimate bona fide factors other than sex, such as training, education, experience or the quantity or quality of production;
- (2) the bona fide factors do not perpetuate a sex-based differential in compensation;
- (3) each of the bona fide factors are applied reasonably;
- (4) one or more of the bona fide factors account for the entire wage differential; and
- (5) the bona fide factors are job-related with respect to the position in question and based on a legitimate business necessity.

The Bill would also restart the statute of limitations for filing suit with the issuance of each differential paycheck, provide for a back pay award for the entire continuous period in which a differential violation is found and allow a

prevailing employee to collect tripled damages. The Bill applies to both public and private employers and requires businesses contracting with the state to report the gender, race, job title and compensation of every employee associated with the contract.

While emphasizing his support for equal pay protections, Governor Christie criticized the Bill for going beyond federal standards and called it “very business unfriendly.” Governor Christie principally took issue with uncapped back pay, state contract reporting requirements, treble damages, and found the Bill was overly simplistic in regard to wage comparisons. Although the Bill passed 28-4 in the Senate and 54-14-6 in the Assembly, it is unclear whether the Bill’s sponsors will attempt an override. The Bill’s sponsors expressed a preference toward working with the governor’s office on an agreement. Governor Christie’s comments suggest that he is in favor of equal pay legislation so long as it does not unduly hinder legitimate business operations and expose employers to excessive liability.

Whichever path the Legislature takes, some variation of the Equal Pay Bill is likely to become law in the near future. Employers should begin to evaluate their position descriptions and compensation practices to determine whether employees with substantially similar responsibilities are receiving comparable pay. Employers should also be mindful to document the business reasons behind pay-related decisions and any disparities in pay between employees performing substantially similar work. We will continue to update you on the Bill’s progress. Should you have any questions about equal pay obligations, please contact [Scott Ohnegian](#), [Daniel Zappo](#), or any member of Riker Danzig’s [Labor & Employment Group](#).

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