



# New Jersey Expands Law Prohibiting Discriminatory Pay Practices Under New Jersey Law Against Discrimination with Groundbreaking Equal Pay Legislation

## Publication:

Riker Danzig Labor & Employment Client Alert May 2, 2018

**Summary:** Governor Phil Murphy signed New Jersey Senate Bill 104 on April 24, 2018 expanding the New Jersey Law Against Discrimination to prohibit discrimination in pay practices. Described by Governor Murphy's office as "the most sweeping equal pay legislation in America," the Diane B. Allen Equal Pay Act will take effect on July 1, 2018 (the "Act").

The Act amends the New Jersey Law Against Discrimination ("LAD") and "strengthens protections against employment discrimination and promotes equal pay for all groups protected by the LAD." (LAD prohibits discrimination on the basis of race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual, or because of the refusal to submit to genetic test or make available the results of a genetic test to an employer.) The pay equity bill passed unanimously in the Senate, 35-0. The Assembly passed it 74-2.

The Act amends the LAD to make it an unlawful employment practice for an employer "to pay any of its employees who is a member of a protected class at a rate of compensation, including benefits, which is less than the rate paid by the employer to employees who are not members of the protected class for *substantially similar work*, when viewed as a composite of skill, effort and responsibility." (Emphasis added). Employers are prohibited from

reducing the rate of compensation of any employee in an effort to comply with the law.

Notably, the law permits an employer to pay a different rate of compensation based upon a seniority system, a merit system, or where an employer demonstrates the following:

- That 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 or experience, or the quantity or quality of production;
- The factor or factors are not based on, and do not perpetuate, a differential in compensation based on sex or any other characteristic of a protected class;
- That each of the factors is applied reasonably;
- That one or more factors account for the entire wage differential; and
- That the factors are job-related with respect to the position in question and based on a legitimate business necessity. A factor based on business necessity shall not apply if it is demonstrated that there are alternative business practices that would serve the same business purpose without producing the wage differential.

Similar to the federal Lilly Ledbetter Fair Pay Act of 2009, the bill restarts the applicable statute of limitations governing discriminatory compensation claims so that each pay check constitutes a “discriminatory compensation decision” and is deemed a new or continuing violation. If the violation continues to occur within the statute of limitations, a person may obtain back pay for a period not to exceed six years, as opposed to two years under the federal law. Employers may not require an employee to consent to a reduction in the applicable statute of limitations. A claimant who prevails under the Act is entitled to treble damages.

For employers entering into contracts with the State, the law requires a report about employees employed under the State contract. The report must include information such as compensation and hours worked by employees by gender, race, ethnicity and job category, in addition to data relating to compensation and hours worked.

The law further prohibits an employer from taking reprisals against an employee for discussing rates of compensation and related information to other employees or former employees and even third parties such as government agencies or attorneys. An employer may not as a condition of employment require any employee to waive these rights under the law.

## **Conclusion**

New Jersey’s newly enacted equal pay law is one of the strongest of its kind in the nation.

The amended law extends full protection of the Law Against Discrimination by prohibiting discriminatory pay practices across all protected classes. The law will take effect on July 1, 2018. Employers who do business in New

Jersey should review their policies to ensure compliance with the law.

If you have any questions about how this decision could affect your organization, please contact [Scott Ohnegian](#), [Natalya Johnson](#), or any member of Riker Danzig's [Labor & Employment Group](#).

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