

New Jersey Enacts Sweeping Equal Pay Law

Yesterday, Governor Phil Murphy signed into law the "Diane B. Allen Equal Pay Act." Named after a former state senator, the law greatly expands equal pay protections for not just women, but all protected classes covered by the Law Against Discrimination (LAD), including gender, sex, race, creed, color, national origin, age, pregnancy or breastfeeding, sexual orientation, gender identity, military status, disability, etc. Once the law takes effect, it will be a prohibited employment practice for employers to pay any member of a protected class less than employees who are not members of the protected class for "substantially similar" work. Moreover, an employer cannot reduce the pay of the higher earner to make the salaries alike.

Employers are permitted to pay lower compensation *only* if they can demonstrate that the pay differential is based on a seniority system, merit system or is based on one or more bona fide factors (such as training, education or experience or the quantity or quality of production), and then only if the factors are (1) not based on and/or do not perpetuate a differential based on protected class, (2) are applied reasonably, (3) account for the entire wage differential and (4) are job related and based on a legitimate business necessity.

New Jersey also goes further than any other state by extending the statute of limitations from two years to six years and by making each payment of wages, benefits or other compensation an occurrence. This means each paycheck could be a new offense.

The Act also expands the definition of retaliation under the LAD to protect employees who "requests from, discusses with or discloses to" another employee, the employee's attorney or any government agency information regarding compensation, job title, or information regarding gender, race, ethnicity, military status or national origin of current or former employees, whether or not the purpose of the request is to assist in investigating or taking legal action regarding potential discriminatory treatment. Thus, employers cannot retaliate against employees who discuss their compensation with co-workers or attorneys.

Lastly, the Act makes it illegal for employers to require employees or potential employees to sign a waiver or otherwise agree not to make requests or disclosures covered by the Act.

In addition to the already broad damages available under the LAD, which include back pay, front pay and compensatory damages, this Act provides for triple damages awards. The law goes into effect July 1st.

Comment: This Act is a seismic shift for New Jersey employers and requires employers to review their compensation policies and practices to ensure they are not in violation of the Act and to make changes accordingly.