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What's on the Horizon? Important Proposed Legislation in New Jersey

It's an exciting time to be in New Jersey this fall—the dense humidity gives way to crisp morning air and the August rain clears as the leaves start to change color. However, if you're an employer in New Jersey, you may have more than just the changing seasons on your mind. The new administration has been marching forward with a variety of employee- and plaintiff-friendly legislation. Below is a summary of important bills pending in the New Jersey State Senate and General Assembly. It is imperative that employers in New Jersey keep an eye on this pending legislation and begin considering the impact of these potential changes.

Proposed Prohibition of Agreements That Conceal Details Relating to Discrimination Claims

Senate Bill 121 recently passed the Senate and is pending review by the New Jersey General Assembly. This proposed bill seeks to ban nondisclosure provisions that would limit an individual's ability to share details of claims of discrimination, retaliation or harassment even in connection with a settlement. The bill further would prohibit employment contracts from waiving any substantive or procedural right or remedy relating to a claim or discrimination, retaliation or harassment, or from requiring a prospective waiver of employee rights under the New Jersey Law Against Discrimination (NJLAD). Retaliation related to an employee's refusal to sign such prohibited agreements would similarly be banned.

Proposed Amendment to the NJLAD to Prohibit Salary History Inquiries

The Senate recently passed Senate Bill 559, and it is pending review by the New Jersey General Assembly. Senate Bill 559 would amend the NJLAD to prohibit inquiries into a prospective employee's salary history with limited exceptions.

Proposed Increases in Minimum Wage for Tipped and Hourly Workers

Two bills propose an increase in the minimum wage of hourly and tipped workers that would take place over the next few years and may greatly impact employers. Senate Bills 864 and 1142, both of which are pending in the Senate Labor Committee, aim to increase the minimum wage from \$8.60 to \$15.00 in increments over the next three years. The rate would immediately increase to \$10.10 per hour, and then increase at a rate of \$1.25 per year until reaching \$15.00 by 2021. Senate Bill 424, which is also pending in the Senate Labor Committee, aims to raise the minimum wage for tipped workers from \$2.13 to \$5.93. Workers would continue earning tips and gratuities.

Proposed "Healthy Workplace Act"

Introduced in the Senate as Bill 710, "The Healthy Workplace Act" is pending in the Senate Labor Committee. This proposed bill seeks to redress bullying behavior in the workplace including behavior that falls outside the existing prohibitions of the NJLAD. Specifically, this new law would prohibit an employer from creating or permitting an abusive work environment where an employee is subjected to abusive conduct that is severe enough to cause physical or psychological harm, such as hostility, sabotage and repeated verbal abuse. The bill also includes an anti-retaliation prohibition, a private right to sue and limited occasion for punitive damages.

Proposed Mandatory Use of E-Verify

The "New Jersey Jobs Protection Act," Senate Bill 528, is pending in the Senate Labor Committee. This proposed law would mandate that New Jersey employers use the federal government's E-Verify program to "electronically confirm the employment eligibility of...employees." Per its website, found at www.e-verify.gov, E-Verify verifies employment status by "electronically matching information provided by employees on the Form I-9, Employment Eligibility Verification, against records available to the Social Security Administration (SSA) and the Department of Homeland Security (DHS)."

If the bill is passed, employers would not only be required to verify status prior to hiring any employee, but also would be subject to steep penalties for employing unauthorized workers. The fines, tier-based on number of offenses, range from \$10,000 for the first offense to \$30,000.

Proposed Limitations on Restrictive Covenants

Senate Bill 635 seeks to limit the enforceability of restrictive covenants in New Jersey. The bill sets forth enumerated parameters for such covenants, including limiting any noncompete clause to 12 months from the date of the termination of employment; limiting geographical scope of restrictive covenants to only those areas where the employee provided services in the past two years; prohibiting limitations of out-of-state employment; and limiting the scope of a nonsolicitation clause to permit a former employee to provide services to a customer or client of the employer so long as the employee did not initiate contact or solicit the client.

Furthermore, the proposed bill identifies categories of employees against whom restrictive covenants are unenforceable, including nonexempt employees, undergraduate or graduate interns, seasonal or temporary employees, independent contractors, employees under 18, and employees who work with an employer for less than one year.

Proposed Ban on At-Will Employment for Certain Types of Employees

Seeking to curtail the well-settled doctrine of at-will employment in New Jersey, Senate Bill 628 would prohibit an employer from discharging an employee without "good cause." The law not only defines good cause but notes that conduct cannot constitute good cause unless the employer has given the employee instructions on how to perform the duties and a written warning to adhere to the instructions. Moreover, in most cases, an employer is required to provide two weeks' notice of termination of employment. This proposed bill would also permit an aggrieved employee to file a demand for arbitration with the New Jersey Board of Mediation.

Employers must be aware of the developments with this pending legislation since, if passed, they would reshape the employment law landscape in New Jersey.

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