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New Jersey Enacts a Broad and All-Encompassing Equal Pay Act

On Tuesday, April 24, Governor Phil Murphy signed into law the Diane B. Allen Equal Pay Act, which prohibits discrimination in employer compensation practices against members of *all protected classes* of employees and is not limited to gender.

The act amends New Jersey's Law Against Discrimination (LAD) and forbids employers from engaging in discriminatory compensation practices in two ways. First, employers are prohibited from discriminating against any employee in "compensation or in the financial terms or conditions of employment," meaning employers cannot compensate employees who are members of a protected class less favorably than other employees for "substantially similar work when viewed as a composite of skill, effort and responsibility." Compensation includes wages, bonus and commission payouts, stock options, and other benefits provided to employees. Second, employers cannot retaliate against employees who discuss or disclose their salary and benefits information to other employees, former employees, an attorney, or a government agency. Employers also cannot require a current or prospective employee to waive the ability to discuss his or her compensation with others as a condition of employment.

The comparison of compensation between employees must "be based on wage rates in all of an employer's operations or facilities" in New Jersey, meaning compensation for similar work must be determined by considering similar positions regardless of where in the state a particular employee works.

There are limited exceptions to the act's requirements. Employers may compensate similarly situated employees differently if the differences are a result of seniority or merit-based systems, or if the employer can demonstrate the following:

1. the differences are based on "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";
2. the factors "are not based on, and do not perpetuate, a differential in compensation based on sex or another characteristic of members of a protected class";
3. each factor "is applied reasonably";
4. "that one or more of the factors account for the entire wage differential"; and
5. the factors "are job-related with respect to the position in question and based on a legitimate business necessity."

An employer found to have violated the act with respect to its compensation practices is liable for treble damages–three times the amount of any monetary award determined to be owed to the employee. The act makes it a new violation on each occasion an employee is affected by a discriminatory practice, including each time wages are paid; therefore, a new claim arises with every paycheck. In addition, prospectively from the date the act became law, employees can recover damages for violations that occurred within six years, whereas other forms of discrimination under the LAD can only be raised within two years' time.

Ultimately, the act seeks to level the playing field for all employees who are engaged in similar work, placing the burden on the employer to demonstrate why similarly situated employees are being compensated differently. Employers must ensure that all employees, regardless of their status as a member of a protected class, are being properly compensated in accordance with the act.

New York, Connecticut and Massachusetts have all enacted similar laws. The New York Labor Law (NYLL) prohibits employers from paying women less money for equal work and restricting employees' ability to discuss or inquire about wage-related issues with co-workers. Like the New Jersey Equal Pay Act, the NYLL permits different pay rates based on a seniority or merit system, the quantity or quality of work, or a "bona fide" factor other than sex, such as education, training or experience. Massachusetts, through its Massachusetts Equal Pay Act, prohibits employers from paying employees of different genders differently for comparable work. This law also includes exceptions for seniority or merit-based systems; systems measuring quantity or quality of work; geographic considerations; the education, training or experience of the worker; or whether travel is a required part of the job. Connecticut's equal pay act requires a "bona fide factor other than sex" to justify wage disparities among employees.

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