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New Jersey Amends Law Against Discrimination to Expand Protections Against Age Discrimination

On October 5, Governor Phil Murphy signed into law amendments to the New Jersey Law Against Discrimination (NJLAD), which, effective immediately, expand the scope of protections against age discrimination. Senator Shirley Turner, a prime sponsor of the amendments, indicated that the goal was to protect employees who "might otherwise be forced into retirement before they are ready."

The NJLAD prohibits employers from discriminating against employees because of their age. The federal Age Discrimination in Employment Act (ADEA) also prohibits employers from discriminating against employees based on their age, but to qualify for protection under the ADEA, employees must be at least the age of 40. The NJLAD, conversely, does not contain any such minimum age requirement.

There are two significant amendments to the NJLAD for private employers. First, the amendments eliminate the NJLAD provision that allowed employers not to hire or promote employees who were over the age of 70. This amendment brings the NJLAD in line with the ADEA, which does not contain a "safe harbor" for employers that refuse to hire or promote employees over the age of 70 because of their age. Second, the amendments expand the remedies available to employees forced to retire due to their age beyond reinstatement and back pay, to include all remedies available under the NJLAD, such as front pay, emotional distress damages, punitive damages and attorneys' fees.

The amendments also remove the NJLAD provision that allowed higher education institutions to require tenured employees to retire when they reach the age of 70. In addition, public employers seeking to impose mandatory retirement ages must now show that employees' age renders them "unable to adequately perform their job duties" rather than simply show that the retirement age "bears a manifest relationship to" employees' positions.

These amendments are significant given the aging population and employees retiring at older ages, and may significantly increase employers' exposure for liability for age discrimination. Given this, employers should immediately review their policies and train their management to ensure compliance with these amendments.

Authors



Daniel L. Schwartz
Partner

Stamford, CT | (203) 977-7536

New York, NY | (212) 297-5800

dlschwartz@daypitney.com



Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com



Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



James M. Leva
Partner

Parsippany, NJ | (973) 966-8416

Stamford, CT | (973) 966-8416

jleva@daypitney.com



Rachel A. Gonzalez
Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com



Theresa A. Kelly
Partner

Parsippany, NJ | (973) 966-8168

tkelly@daypitney.com