

[Second Reprint]

SENATE, No. 104

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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SYNOPSIS

“Diane B. Allen Equal Pay Act.”

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on March 13, 2018, with amendments.

(Sponsorship Updated As Of: 3/27/2018)

1 AN ACT concerning equal pay ¹**[for women]**¹ and employment
2 discrimination, requiring public contractors to report certain
3 employment information, amending P.L.1945, c.169, and
4 supplementing P.L.1952, c.9 (C.34:11-56.1 et seq.).
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:
8

9 ²1. (New section) This act shall be known and may be cited as
10 the “Diane B. Allen Equal Pay Act.”²
11

12 ²**[1.]** 2.² Section 11 of P.L.1945, c.169 (C.10:5-12) is amended
13 to read as follows:

14 11. It shall be an unlawful employment practice, or, as the case
15 may be, an unlawful discrimination:

16 a. For an employer, because of the race, creed, color, national
17 origin, ancestry, age, marital status, civil union status, domestic
18 partnership status, affectional or sexual orientation, genetic
19 information, pregnancy or breastfeeding, sex, gender identity or
20 expression, disability or atypical hereditary cellular or blood trait of
21 any individual, or because of the liability for service in the Armed
22 Forces of the United States or the nationality of any individual, or
23 because of the refusal to submit to a genetic test or make available
24 the results of a genetic test to an employer, to refuse to hire or
25 employ or to bar or to discharge or require to retire, unless justified
26 by lawful considerations other than age, from employment such
27 individual or to discriminate against such individual in
28 compensation or in terms, conditions or privileges of employment;
29 provided, however, it shall not be an unlawful employment practice
30 to refuse to accept for employment an applicant who has received a
31 notice of induction or orders to report for active duty in the armed
32 forces; provided further that nothing herein contained shall be
33 construed to bar an employer from refusing to accept for
34 employment any person on the basis of sex in those certain
35 circumstances where sex is a bona fide occupational qualification,
36 reasonably necessary to the normal operation of the particular
37 business or enterprise; provided further that nothing herein
38 contained shall be construed to bar an employer from refusing to
39 accept for employment or to promote any person over 70 years of
40 age; provided further that it shall not be an unlawful employment
41 practice for a club exclusively social or fraternal to use club
42 membership as a uniform qualification for employment, or for a
43 religious association or organization to utilize religious affiliation

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted March 5, 2018.

²Senate SBA committee amendments adopted March 13, 2018.

1 as a uniform qualification in the employment of clergy, religious
2 teachers or other employees engaged in the religious activities of
3 the association or organization, or in following the tenets of its
4 religion in establishing and utilizing criteria for employment of an
5 employee; provided further, that it shall not be an unlawful
6 employment practice to require the retirement of any employee
7 who, for the two-year period immediately before retirement, is
8 employed in a bona fide executive or a high policy-making position,
9 if that employee is entitled to an immediate non-forfeitable annual
10 retirement benefit from a pension, profit sharing, savings or
11 deferred retirement plan, or any combination of those plans, of the
12 employer of that employee which equals in the aggregate at least
13 \$27,000.00; and provided further that an employer may restrict
14 employment to citizens of the United States where such restriction
15 is required by federal law or is otherwise necessary to protect the
16 national interest.

17 The provisions of subsections a. and b. of section 57 of
18 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of
19 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an
20 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

21 For the purposes of this subsection, a "bona fide executive" is a
22 top level employee who exercises substantial executive authority
23 over a significant number of employees and a large volume of
24 business. A "high policy-making position" is a position in which a
25 person plays a significant role in developing policy and in
26 recommending the implementation thereof.

27 For the purposes of this subsection, an unlawful employment
28 practice occurs, with respect to discrimination in compensation or
29 in the financial terms or conditions of employment, each occasion
30 that an individual is affected by application of a discriminatory
31 compensation decision or other practice, including, but not limited
32 to, each occasion that wages, benefits, or other compensation are
33 paid, resulting in whole or in part from the decision or other
34 practice.

35 In addition to any other relief authorized by the "Law Against
36 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) for
37 discrimination in compensation or in the financial terms or
38 conditions of employment, liability shall accrue and an aggrieved
39 person may obtain relief for back pay for the entire period of time ²,
40 except not more than six years, ² in which the violation with regard
41 to discrimination in compensation or in the financial terms or
42 conditions of employment has been continuous, if the violation
43 continues to occur within the statute of limitations.

44 Nothing in this subsection shall prohibit the application of the
45 doctrine of "continuing violation" or the "discovery rule" to any
46 appropriate claim as those doctrines currently exist in New Jersey
47 common law. It shall be an unlawful employment practice to
48 require employees or prospective employees to consent to a

1 shortened statute of limitations or to waive any of the protections
2 provided by the “Law Against Discrimination,” P.L.1945, c.169
3 (C.10:5-1 et seq.).

4 b. For a labor organization, because of the race, creed, color,
5 national origin, ancestry, age, marital status, civil union status,
6 domestic partnership status, affectional or sexual orientation,
7 gender identity or expression, disability, pregnancy or
8 breastfeeding, or sex of any individual, or because of the liability
9 for service in the Armed Forces of the United States or nationality
10 of any individual, to exclude or to expel from its membership such
11 individual or to discriminate in any way against any of its members,
12 against any applicant for, or individual included in, any apprentice
13 or other training program or against any employer or any individual
14 employed by an employer; provided, however, that nothing herein
15 contained shall be construed to bar a labor organization from
16 excluding from its apprentice or other training programs any person
17 on the basis of sex in those certain circumstances where sex is a
18 bona fide occupational qualification reasonably necessary to the
19 normal operation of the particular apprentice or other training
20 program.

21 c. For any employer or employment agency to print or circulate
22 or cause to be printed or circulated any statement, advertisement or
23 publication, or to use any form of application for employment, or to
24 make an inquiry in connection with prospective employment, which
25 expresses, directly or indirectly, any limitation, specification or
26 discrimination as to race, creed, color, national origin, ancestry,
27 age, marital status, civil union status, domestic partnership status,
28 affectional or sexual orientation, gender identity or expression,
29 disability, nationality, pregnancy or breastfeeding, or sex or liability
30 of any applicant for employment for service in the Armed Forces of
31 the United States, or any intent to make any such limitation,
32 specification or discrimination, unless based upon a bona fide
33 occupational qualification.

34 d. For any person to take reprisals against any person because
35 that person has opposed any practices or acts forbidden under this
36 act or because that person has sought legal advice regarding rights
37 under this act, shared relevant information with legal counsel,
38 shared information with a governmental entity, or filed a complaint,
39 testified or assisted in any proceeding under this act or to coerce,
40 intimidate, threaten or interfere with any person in the exercise or
41 enjoyment of, or on account of that person having aided or
42 encouraged any other person in the exercise or enjoyment of, any
43 right granted or protected by this act.

44 e. For any person, whether an employer or an employee or not,
45 to aid, abet, incite, compel or coerce the doing of any of the acts
46 forbidden under this act, or to attempt to do so.

47 f. (1) For any owner, lessee, proprietor, manager,
48 superintendent, agent, or employee of any place of public

1 accommodation directly or indirectly to refuse, withhold from or
2 deny to any person any of the accommodations, advantages,
3 facilities or privileges thereof, or to discriminate against any person
4 in the furnishing thereof, or directly or indirectly to publish,
5 circulate, issue, display, post or mail any written or printed
6 communication, notice, or advertisement to the effect that any of
7 the accommodations, advantages, facilities, or privileges of any
8 such place will be refused, withheld from, or denied to any person
9 on account of the race, creed, color, national origin, ancestry,
10 marital status, civil union status, domestic partnership status,
11 pregnancy or breastfeeding, sex, gender identity or expression,
12 affectional or sexual orientation, disability, liability for service in
13 the Armed Forces of the United States or nationality of such person,
14 or that the patronage or custom thereof of any person of any
15 particular race, creed, color, national origin, ancestry, marital status,
16 civil union status, domestic partnership status, pregnancy or
17 breastfeeding status, sex, gender identity or expression, affectional
18 or sexual orientation, disability, liability for service in the Armed
19 Forces of the United States or nationality is unwelcome,
20 objectionable or not acceptable, desired or solicited, and the
21 production of any such written or printed communication, notice or
22 advertisement, purporting to relate to any such place and to be made
23 by any owner, lessee, proprietor, superintendent or manager thereof,
24 shall be presumptive evidence in any action that the same was
25 authorized by such person; provided, however, that nothing
26 contained herein shall be construed to bar any place of public
27 accommodation which is in its nature reasonably restricted
28 exclusively to individuals of one sex, and which shall include but
29 not be limited to any summer camp, day camp, or resort camp,
30 bathhouse, dressing room, swimming pool, gymnasium, comfort
31 station, dispensary, clinic or hospital, or school or educational
32 institution which is restricted exclusively to individuals of one sex,
33 provided individuals shall be admitted based on their gender
34 identity or expression, from refusing, withholding from or denying
35 to any individual of the opposite sex any of the accommodations,
36 advantages, facilities or privileges thereof on the basis of sex;
37 provided further, that the foregoing limitation shall not apply to any
38 restaurant as defined in R.S.33:1-1 or place where alcoholic
39 beverages are served.

40 (2) Notwithstanding the definition of "a place of public
41 accommodation" as set forth in subsection 1. of section 5 of
42 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
43 manager, superintendent, agent, or employee of any private club or
44 association to directly or indirectly refuse, withhold from or deny to
45 any individual who has been accepted as a club member and has
46 contracted for or is otherwise entitled to full club membership any
47 of the accommodations, advantages, facilities or privileges thereof,
48 or to discriminate against any member in the furnishing thereof on

1 account of the race, creed, color, national origin, ancestry, marital
2 status, civil union status, domestic partnership status, pregnancy or
3 breastfeeding, sex, gender identity, or expression, affectional or
4 sexual orientation, disability, liability for service in the Armed
5 Forces of the United States or nationality of such person.

6 In addition to the penalties otherwise provided for a violation of
7 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
8 of subsection f. of this section is the holder of an alcoholic beverage
9 license issued under the provisions of R.S.33:1-12 for that private
10 club or association, the matter shall be referred to the Director of
11 the Division of Alcoholic Beverage Control who shall impose an
12 appropriate penalty in accordance with the procedures set forth in
13 R.S.33:1-31.

14 g. For any person, including but not limited to, any owner,
15 lessee, sublessee, assignee or managing agent of, or other person
16 having the right of ownership or possession of or the right to sell,
17 rent, lease, assign, or sublease any real property or part or portion
18 thereof, or any agent or employee of any of these:

19 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
20 to deny to or withhold from any person or group of persons any real
21 property or part or portion thereof because of race, creed, color,
22 national origin, ancestry, marital status, civil union status, domestic
23 partnership status, pregnancy or breastfeeding, sex, gender identity
24 or expression, affectional or sexual orientation, familial status,
25 disability, liability for service in the Armed Forces of the United
26 States, nationality, or source of lawful income used for rental or
27 mortgage payments;

28 (2) To discriminate against any person or group of persons
29 because of race, creed, color, national origin, ancestry, marital
30 status, civil union status, domestic partnership status, pregnancy or
31 breastfeeding, sex, gender identity or expression, affectional or
32 sexual orientation, familial status, disability, liability for service in
33 the Armed Forces of the United States, nationality or source of
34 lawful income used for rental or mortgage payments in the terms,
35 conditions or privileges of the sale, rental or lease of any real
36 property or part or portion thereof or in the furnishing of facilities
37 or services in connection therewith;

38 (3) To print, publish, circulate, issue, display, post or mail, or
39 cause to be printed, published, circulated, issued, displayed, posted
40 or mailed any statement, advertisement, publication or sign, or to
41 use any form of application for the purchase, rental, lease,
42 assignment or sublease of any real property or part or portion
43 thereof, or to make any record or inquiry in connection with the
44 prospective purchase, rental, lease, assignment, or sublease of any
45 real property, or part or portion thereof which expresses, directly or
46 indirectly, any limitation, specification or discrimination as to race,
47 creed, color, national origin, ancestry, marital status, civil union
48 status, domestic partnership status, pregnancy or breastfeeding, sex,

1 gender identity, or expression, affectional or sexual orientation,
2 familial status, disability, liability for service in the Armed Forces
3 of the United States, nationality, or source of lawful income used
4 for rental or mortgage payments, or any intent to make any such
5 limitation, specification or discrimination, and the production of
6 any such statement, advertisement, publicity, sign, form of
7 application, record, or inquiry purporting to be made by any such
8 person shall be presumptive evidence in any action that the same
9 was authorized by such person; provided, however, that nothing
10 contained in this subsection shall be construed to bar any person
11 from refusing to sell, rent, lease, assign or sublease or from
12 advertising or recording a qualification as to sex for any room,
13 apartment, flat in a dwelling or residential facility which is planned
14 exclusively for and occupied by individuals of one sex to any
15 individual of the exclusively opposite sex on the basis of sex
16 provided individuals shall be qualified based on their gender
17 identity or expression;

18 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
19 to deny to or withhold from any person or group of persons any real
20 property or part or portion thereof because of the source of any
21 lawful income received by the person or the source of any lawful
22 rent payment to be paid for the real property; or

23 (5) To refuse to rent or lease any real property to another person
24 because that person's family includes children under 18 years of
25 age, or to make an agreement, rental or lease of any real property
26 which provides that the agreement, rental or lease shall be rendered
27 null and void upon the birth of a child. This paragraph shall not
28 apply to housing for older persons as defined in subsection mm. of
29 section 5 of P.L.1945, c.169 (C.10:5-5).

30 h. For any person, including but not limited to, any real estate
31 broker, real estate salesperson, or employee or agent thereof:

32 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
33 sale, rental, lease, assignment, or sublease any real property or part
34 or portion thereof to any person or group of persons or to refuse to
35 negotiate for the sale, rental, lease, assignment, or sublease of any
36 real property or part or portion thereof to any person or group of
37 persons because of race, creed, color, national origin, ancestry,
38 marital status, civil union status, domestic partnership status,
39 familial status, pregnancy or breastfeeding, sex, gender identity or
40 expression, affectional or sexual orientation, liability for service in
41 the Armed Forces of the United States, disability, nationality, or
42 source of lawful income used for rental or mortgage payments, or to
43 represent that any real property or portion thereof is not available
44 for inspection, sale, rental, lease, assignment, or sublease when in
45 fact it is so available, or otherwise to deny or withhold any real
46 property or any part or portion of facilities thereof to or from any
47 person or group of persons because of race, creed, color, national
48 origin, ancestry, marital status, civil union status, domestic

1 partnership status, familial status, pregnancy or breastfeeding, sex,
2 gender identity or expression, affectional or sexual orientation,
3 liability for service in the Armed Forces of the United States,
4 disability or nationality;

5 (2) To discriminate against any person because of race, creed,
6 color, national origin, ancestry, marital status, civil union status,
7 domestic partnership status, familial status, pregnancy or
8 breastfeeding, sex, gender identity or expression, affectional or
9 sexual orientation, disability, nationality, or source of lawful
10 income used for rental or mortgage payments in the terms,
11 conditions or privileges of the sale, rental, lease, assignment or
12 sublease of any real property or part or portion thereof or in the
13 furnishing of facilities or services in connection therewith;

14 (3) To print, publish, circulate, issue, display, post, or mail, or
15 cause to be printed, published, circulated, issued, displayed, posted
16 or mailed any statement, advertisement, publication or sign, or to
17 use any form of application for the purchase, rental, lease,
18 assignment, or sublease of any real property or part or portion
19 thereof or to make any record or inquiry in connection with the
20 prospective purchase, rental, lease, assignment, or sublease of any
21 real property or part or portion thereof which expresses, directly or
22 indirectly, any limitation, specification or discrimination as to race,
23 creed, color, national origin, ancestry, marital status, civil union
24 status, domestic partnership status, familial status, pregnancy or
25 breastfeeding, sex, gender identity or expression, affectional or
26 sexual orientation, disability, liability for service in the Armed
27 Forces of the United States, nationality, or source of lawful income
28 used for rental or mortgage payments or any intent to make any
29 such limitation, specification or discrimination, and the production
30 of any such statement, advertisement, publicity, sign, form of
31 application, record, or inquiry purporting to be made by any such
32 person shall be presumptive evidence in any action that the same
33 was authorized by such person; provided, however, that nothing
34 contained in this subsection h., shall be construed to bar any person
35 from refusing to sell, rent, lease, assign or sublease or from
36 advertising or recording a qualification as to sex for any room,
37 apartment, flat in a dwelling or residential facility which is planned
38 exclusively for and occupied exclusively by individuals of one sex
39 to any individual of the opposite sex on the basis of sex, provided
40 individuals shall be qualified based on their gender identity or
41 expression;

42 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
43 to deny to or withhold from any person or group of persons any real
44 property or part or portion thereof because of the source of any
45 lawful income received by the person or the source of any lawful
46 rent payment to be paid for the real property; or

47 (5) To refuse to rent or lease any real property to another person
48 because that person's family includes children under 18 years of

1 age, or to make an agreement, rental or lease of any real property
2 which provides that the agreement, rental or lease shall be rendered
3 null and void upon the birth of a child. This paragraph shall not
4 apply to housing for older persons as defined in subsection mm. of
5 section 5 of P.L.1945, c.169 (C.10:5-5).

6 i. For any person, bank, banking organization, mortgage
7 company, insurance company or other financial institution, lender
8 or credit institution involved in the making or purchasing of any
9 loan or extension of credit, for whatever purpose, whether secured
10 by residential real estate or not, including but not limited to
11 financial assistance for the purchase, acquisition, construction,
12 rehabilitation, repair or maintenance of any real property or part or
13 portion thereof or any agent or employee thereof:

14 (1) To discriminate against any person or group of persons
15 because of race, creed, color, national origin, ancestry, marital
16 status, civil union status, domestic partnership status, pregnancy or
17 breastfeeding, sex, gender identity or expression, affectional or
18 sexual orientation, disability, liability for service in the Armed
19 Forces of the United States, familial status or nationality, in the
20 granting, withholding, extending, modifying, renewing, or
21 purchasing, or in the fixing of the rates, terms, conditions or
22 provisions of any such loan, extension of credit or financial
23 assistance or purchase thereof or in the extension of services in
24 connection therewith;

25 (2) To use any form of application for such loan, extension of
26 credit or financial assistance or to make record or inquiry in
27 connection with applications for any such loan, extension of credit
28 or financial assistance which expresses, directly or indirectly, any
29 limitation, specification or discrimination as to race, creed, color,
30 national origin, ancestry, marital status, civil union status, domestic
31 partnership status, pregnancy or breastfeeding, sex, gender identity
32 or expression, affectional or sexual orientation, disability, liability
33 for service in the Armed Forces of the United States, familial status
34 or nationality or any intent to make any such limitation,
35 specification or discrimination; unless otherwise required by law or
36 regulation to retain or use such information;

37 (3) (Deleted by amendment, P.L.2003, c.180).

38 (4) To discriminate against any person or group of persons
39 because of the source of any lawful income received by the person
40 or the source of any lawful rent payment to be paid for the real
41 property; or

42 (5) To discriminate against any person or group of persons
43 because that person's family includes children under 18 years of
44 age, or to make an agreement or mortgage which provides that the
45 agreement or mortgage shall be rendered null and void upon the
46 birth of a child. This paragraph shall not apply to housing for older
47 persons as defined in subsection mm. of section 5 of P.L.1945,
48 c.169 (C.10:5-5).

1 j. For any person whose activities are included within the
2 scope of this act to refuse to post or display such notices concerning
3 the rights or responsibilities of persons affected by this act as the
4 Attorney General may by regulation require.

5 k. For any real estate broker, real estate salesperson or
6 employee or agent thereof or any other individual, corporation,
7 partnership, or organization, for the purpose of inducing a
8 transaction for the sale or rental of real property from which
9 transaction such person or any of its members may benefit
10 financially, to represent that a change has occurred or will or may
11 occur in the composition with respect to race, creed, color, national
12 origin, ancestry, marital status, civil union status, domestic
13 partnership status, familial status, pregnancy or breastfeeding, sex,
14 gender identity or expression, affectional or sexual orientation,
15 disability, liability for service in the Armed Forces of the United
16 States, nationality, or source of lawful income used for rental or
17 mortgage payments of the owners or occupants in the block,
18 neighborhood or area in which the real property is located, and to
19 represent, directly or indirectly, that this change will or may result
20 in undesirable consequences in the block, neighborhood or area in
21 which the real property is located, including, but not limited to the
22 lowering of property values, an increase in criminal or anti-social
23 behavior, or a decline in the quality of schools or other facilities.

24 l. For any person to refuse to buy from, sell to, lease from or
25 to, license, contract with, or trade with, provide goods, services or
26 information to, or otherwise do business with any other person on
27 the basis of the race, creed, color, national origin, ancestry, age,
28 pregnancy or breastfeeding, sex, gender identity or expression,
29 affectional or sexual orientation, marital status, civil union status,
30 domestic partnership status, liability for service in the Armed
31 Forces of the United States, disability, nationality, or source of
32 lawful income used for rental or mortgage payments of such other
33 person or of such other person's spouse, partners, members,
34 stockholders, directors, officers, managers, superintendents, agents,
35 employees, business associates, suppliers, or customers. This
36 subsection shall not prohibit refusals or other actions (1) pertaining
37 to employee-employer collective bargaining, labor disputes, or
38 unfair labor practices, or (2) made or taken in connection with a
39 protest of unlawful discrimination or unlawful employment
40 practices.

41 m. For any person to:

42 (1) Grant or accept any letter of credit or other document which
43 evidences the transfer of funds or credit, or enter into any contract
44 for the exchange of goods or services, where the letter of credit,
45 contract, or other document contains any provisions requiring any
46 person to discriminate against or to certify that he, she or it has not
47 dealt with any other person on the basis of the race, creed, color,
48 national origin, ancestry, age, pregnancy or breastfeeding, sex,

1 gender identity or expression, affectional or sexual orientation,
2 marital status, civil union status, domestic partnership status,
3 disability, liability for service in the Armed Forces of the United
4 States, or nationality of such other person or of such other person's
5 spouse, partners, members, stockholders, directors, officers,
6 managers, superintendents, agents, employees, business associates,
7 suppliers, or customers.

8 (2) Refuse to grant or accept any letter of credit or other
9 document which evidences the transfer of funds or credit, or refuse
10 to enter into any contract for the exchange of goods or services, on
11 the ground that it does not contain such a discriminatory provision
12 or certification.

13 The provisions of this subsection shall not apply to any letter of
14 credit, contract, or other document which contains any provision
15 pertaining to employee-employer collective bargaining, a labor
16 dispute or an unfair labor practice, or made in connection with the
17 protest of unlawful discrimination or an unlawful employment
18 practice, if the other provisions of such letter of credit, contract, or
19 other document do not otherwise violate the provisions of this
20 subsection.

21 n. For any person to aid, abet, incite, compel, coerce, or induce
22 the doing of any act forbidden by subsections l. and m. of section
23 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
24 do so. Such prohibited conduct shall include, but not be limited to:

25 (1) Buying from, selling to, leasing from or to, licensing,
26 contracting with, trading with, providing goods, services, or
27 information to, or otherwise doing business with any person
28 because that person does, or agrees or attempts to do, any such act
29 or any act prohibited by this subsection; or

30 (2) Boycotting, commercially blacklisting or refusing to buy
31 from, sell to, lease from or to, license, contract with, provide goods,
32 services or information to, or otherwise do business with any person
33 because that person has not done or refuses to do any such act or
34 any act prohibited by this subsection; provided that this subsection
35 shall not prohibit refusals or other actions either pertaining to
36 employee-employer collective bargaining, labor disputes, or unfair
37 labor practices, or made or taken in connection with a protest of
38 unlawful discrimination or unlawful employment practices.

39 o. For any multiple listing service, real estate brokers'
40 organization or other service, organization or facility related to the
41 business of selling or renting dwellings to deny any person access
42 to or membership or participation in such organization, or to
43 discriminate against such person in the terms or conditions of such
44 access, membership, or participation, on account of race, creed,
45 color, national origin, ancestry, age, marital status, civil union
46 status, domestic partnership status, familial status, pregnancy or
47 breastfeeding, sex, gender identity or expression, affectional or

1 sexual orientation, disability, liability for service in the Armed
2 Forces of the United States or nationality.

3 p. Nothing in the provisions of this section shall affect the
4 ability of an employer to require employees to adhere to reasonable
5 workplace appearance, grooming and dress standards not precluded
6 by other provisions of State or federal law, except that an employer
7 shall allow an employee to appear, groom and dress consistent with
8 the employee's gender identity or expression.

9 q. (1) For any employer to impose upon a person as a condition
10 of obtaining or retaining employment, including opportunities for
11 promotion, advancement or transfers, any terms or conditions that
12 would require a person to violate or forego a sincerely held
13 religious practice or religious observance, including but not limited
14 to the observance of any particular day or days or any portion
15 thereof as a Sabbath or other holy day in accordance with the
16 requirements of the religion or religious belief, unless, after
17 engaging in a bona fide effort, the employer demonstrates that it is
18 unable to reasonably accommodate the employee's religious
19 observance or practice without undue hardship on the conduct of the
20 employer's business. Notwithstanding any other provision of law to
21 the contrary, an employee shall not be entitled to premium wages or
22 premium benefits for work performed during hours to which those
23 premium wages or premium benefits would ordinarily be
24 applicable, if the employee is working during those hours only as an
25 accommodation to his religious requirements. Nothing in this
26 subsection q. shall be construed as reducing:

27 (a) The number of the hours worked by the employee which are
28 counted towards the accruing of seniority, pension or other benefits;
29 or

30 (b) Any premium wages or benefits provided to an employee
31 pursuant to a collective bargaining agreement.

32 (2) For an employer to refuse to permit an employee to utilize
33 leave, as provided for in this subsection q., which is solely used to
34 accommodate the employee's sincerely held religious observance or
35 practice. Except where it would cause an employer to incur an
36 undue hardship, no person shall be required to remain at his place
37 of employment during any day or days or portion thereof that, as a
38 requirement of his religion, he observes as his Sabbath or other holy
39 day, including a reasonable time prior and subsequent thereto for
40 travel between his place of employment and his home; provided that
41 any such absence from work shall, wherever practicable in the
42 reasonable judgment of the employer, be made up by an equivalent
43 amount of time and work at some other mutually convenient time,
44 or shall be charged against any leave with pay ordinarily granted,
45 other than sick leave, and any such absence not so made up or
46 charged, may be treated by the employer of that person as leave
47 taken without pay.

1 (3) (a) For purposes of this subsection q., "undue hardship"
2 means an accommodation requiring unreasonable expense or
3 difficulty, unreasonable interference with the safe or efficient
4 operation of the workplace or a violation of a bona fide seniority
5 system or a violation of any provision of a bona fide collective
6 bargaining agreement.

7 (b) In determining whether the accommodation constitutes an
8 undue hardship, the factors considered shall include:

9 (i) The identifiable cost of the accommodation, including the
10 costs of loss of productivity and of retaining or hiring employees or
11 transferring employees from one facility to another, in relation to
12 the size and operating cost of the employer.

13 (ii) The number of individuals who will need the particular
14 accommodation for a sincerely held religious observance or
15 practice.

16 (iii) For an employer with multiple facilities, the degree to
17 which the geographic separateness or administrative or fiscal
18 relationship of the facilities will make the accommodation more
19 difficult or expensive.

20 (c) An accommodation shall be considered to constitute an
21 undue hardship if it will result in the inability of an employee to
22 perform the essential functions of the position in which he or she is
23 employed.

24 (d) (i) The provisions of this subsection q. shall be applicable
25 only to reasonable accommodations of religious observances and
26 shall not supersede any definition of undue hardship or standards
27 for reasonable accommodation of the disabilities of employees.

28 (ii) This subsection q. shall not apply where the uniform
29 application of terms and conditions of attendance to employees is
30 essential to prevent undue hardship to the employer. The burden of
31 proof regarding the applicability of this subparagraph (d) shall be
32 upon the employer.

33 r. For any employer to take reprisals against any employee for
34 requesting from ¹, discussing with¹, or disclosing to, any other
35 employee or former employee of the employer, a lawyer from
36 whom the employee seeks legal advice, or any government agency
37 information regarding the job title, occupational category, and rate
38 of compensation, including benefits, of the employee or any other
39 employee or former employee of the employer, or the gender, race,
40 ethnicity, military status, or national origin of the employee or any
41 other employee or former employee of the employer, regardless of
42 whether the request was responded to ¹], if the purpose of the
43 request for the information was to assist in investigating the
44 possibility of the occurrence of, or in taking of legal action
45 regarding, potential discriminatory treatment concerning pay,
46 compensation, bonuses, other compensation, or benefits¹, or to
47 require, as a condition of employment, any employee or prospective
48 employee to sign a waiver, or to otherwise require an employee or

1 prospective employee to agree, not to make those requests or
2 disclosures. Nothing in this subsection shall be construed to require
3 an employee to disclose such information about the employee
4 herself to any other employee or former employee of the employer
5 or to any authorized representative of the other employee or former
6 employee.

7 s. For an employer to treat, for employment-related purposes, a
8 woman employee that the employer knows, or should know, is
9 affected by pregnancy or breastfeeding in a manner less favorable
10 than the treatment of other persons not affected by pregnancy or
11 breastfeeding but similar in their ability or inability to work. In
12 addition, an employer of an employee who is a woman affected by
13 pregnancy shall make available to the employee reasonable
14 accommodation in the workplace, such as bathroom breaks, breaks
15 for increased water intake, periodic rest, assistance with manual
16 labor, job restructuring or modified work schedules, and temporary
17 transfers to less strenuous or hazardous work, for needs related to
18 the pregnancy when the employee, based on the advice of her
19 physician, requests the accommodation, and, in the case of a
20 employee breast feeding her infant child, the accommodation shall
21 include reasonable break time each day to the employee and a
22 suitable room or other location with privacy, other than a toilet stall,
23 in close proximity to the work area for the employee to express
24 breast milk for the child, unless the employer can demonstrate that
25 providing the accommodation would be an undue hardship on the
26 business operations of the employer. The employer shall not in any
27 way penalize the employee in terms, conditions or privileges of
28 employment for requesting or using the accommodation. Workplace
29 accommodation provided pursuant to this subsection and paid or
30 unpaid leave provided to an employee affected by pregnancy or
31 breastfeeding shall not be provided in a manner less favorable than
32 accommodations or leave provided to other employees not affected
33 by pregnancy or breastfeeding but similar in their ability or inability
34 to work. This subsection shall not be construed as otherwise
35 increasing or decreasing any employee's rights under law to paid or
36 unpaid leave in connection with pregnancy or breastfeeding.

37 For the purposes of this section "pregnancy or breastfeeding"
38 means pregnancy, childbirth, and breast feeding or expressing milk
39 for breastfeeding, or medical conditions related to pregnancy,
40 childbirth, or breastfeeding, including recovery from childbirth.

41 For the purposes of this subsection, in determining whether an
42 accommodation would impose undue hardship on the operation of
43 an employer's business, the factors to be considered include: the
44 overall size of the employer's business with respect to the number
45 of employees, number and type of facilities, and size of budget; the
46 type of the employer's operations, including the composition and
47 structure of the employer's workforce; the nature and cost of the
48 accommodation needed, taking into consideration the availability of

1 tax credits, tax deductions, and outside funding; and the extent to
2 which the accommodation would involve waiver of an essential
3 requirement of a job as opposed to a tangential or non-business
4 necessity requirement.

5 t. For an employer to pay any of its employees ¹who is a
6 member of a protected class¹ at a rate of compensation, including
7 benefits, which is less than the rate paid by the employer to
8 employees ¹[of the other sex] who are not members of the
9 protected class¹ for substantially similar work, when viewed as a
10 composite of skill, effort and responsibility. An employer who is
11 paying a rate of compensation in violation of this subsection shall
12 not reduce the rate of compensation of any employee in order to
13 comply with this subsection. An employer may pay a different rate
14 of compensation only if the employer demonstrates that the
15 differential is made pursuant to a seniority system, a merit system,
16 or the employer demonstrates:

17 (1) That the differential is based on one or more legitimate, bona
18 fide factors other than ¹[sex] the characteristics of members of the
19 protected class¹, such as training, education or experience, or the
20 quantity or quality of production;

21 (2) That the factor or factors ¹are not based on, and¹ do not
22 perpetuate¹, ¹a ¹[sex-based]¹ differential in compensation ¹based
23 on sex or any other characteristic of members of a protected class¹;

24 (3) That each of the factors is applied reasonably;

25 (4) That one or more of the factors account for the entire wage
26 differential; and

27 (5) That the factors are job-related with respect to the position
28 in question and based on a legitimate business necessity. A factor
29 based on business necessity shall not apply if it is demonstrated that
30 there are alternative business practices that would serve the same
31 business purpose without producing the wage differential.

32 Comparisons of wage rates shall be based on wage rates in all of
33 an employer's operations or facilities. ¹For the purposes of this
34 subsection, "member of a protected class" means an employee who
35 has one or more characteristics, including race, creed, color,
36 national origin, nationality, ancestry, age, marital status, civil union
37 status, domestic partnership status, affectional or sexual orientation,
38 genetic information, pregnancy, sex, gender identity or expression,
39 disability or atypical hereditary cellular or blood trait of any
40 individual, or liability for service in the armed forces, for which
41 subsection a. of this section prohibits an employer from refusing to
42 hire or employ or barring or discharging or requiring to retire from
43 employment or discriminating against the individual in
44 compensation or in terms, conditions or privileges of employment.¹

45 (cf: P.L.2017, c.263, s.1).

1 ²3. Section 12 of P.L.1945, c.169 (C.10:5-13) is amended to
2 read as follows:

3 12. Any person claiming to be aggrieved by an unlawful
4 employment practice or an unlawful discrimination may, personally
5 or by an attorney-at-law, make, sign and file with the division a
6 verified complaint in writing which shall state the name and address
7 of the person, employer, labor organization, employment agency,
8 owner, lessee, proprietor, manager, superintendent, or agent alleged
9 to have committed the unlawful employment practice or unlawful
10 discrimination complained of and which shall set forth the
11 particulars thereof and shall contain such other information as may
12 be required by the division. Upon receipt of the complaint, the
13 division shall notify the complainant on a form promulgated by the
14 director of the division and approved by the Attorney General of the
15 complainant's rights under this act, including the right to file a
16 complaint in the Superior Court to be heard before a jury; of the
17 jurisdictional limitations of the division; and any other provisions of
18 this act, without interpretation, that may apply to the complaint. The
19 Commissioner of Labor and Workforce Development, the Attorney
20 General, or the Commissioner of Education may, in like manner,
21 make, sign and file such complaint. Any employer whose
22 employees, or some of them, refuse or threaten to refuse to co-
23 operate with the provisions of this act, may file with the division a
24 verified complaint asking for assistance by conciliation or other
25 remedial action.

26 Any complainant may initiate suit in Superior Court under this
27 act without first filing a complaint with the division or any
28 municipal office. Upon the application of any party, a jury trial
29 shall be directed to try the validity of any claim under this act
30 specified in the suit. All remedies available in common law tort
31 actions shall be available to prevailing plaintiffs. These remedies
32 are in addition to any provided by this act or any other statute.
33 Prosecution of such suit in Superior Court under this act shall bar
34 the filing of a complaint with the division or any municipal office
35 during the pendency of any such suit. If a jury determines that an
36 employer is guilty of an unlawful employment practice prohibited
37 by subsection r. or t. of section 11 of P.L.1945, c.169 (C.10:5-12),
38 the judge shall award three times any monetary damages to the
39 person or persons aggrieved by the violation.

40 At any time after 180 days from the filing of a complaint with
41 the division, a complainant may file a request with the division to
42 present the action personally or through counsel to the Office of
43 Administrative Law. Upon such request, the director of the division
44 shall file the action with the Office of Administrative Law,
45 provided that no action may be filed with the Office of
46 Administrative Law where the director of the division has found
47 that no probable cause exists to credit the allegations of the
48 complaint or has otherwise dismissed the complaint.

1 A party to an action based upon a violation of this act shall mail
2 a copy of the initial pleadings or claims, amended pleadings or
3 claims, counterclaims, briefs, and legal memoranda to the division
4 at the same time as filing such documents with the Office of
5 Administrative Law or the court. Upon application to the Office of
6 Administrative Law or to the court wherein the matter is pending,
7 the division shall be permitted to intervene.²

8 (cf: P.L.1990, c.12, s.2)

9
10 ²~~2.~~ 4.² Section 16 of P.L.1945, c.169 (C.10:5-17) is
11 amended to read as follows:

12 16. If, upon all evidence at the hearing, the director shall find
13 that the respondent has engaged in any unlawful employment
14 practice or unlawful discrimination as defined in this act, the
15 director shall state his findings of fact and conclusions of law and
16 shall issue and cause to be served on such respondent an order
17 requiring such respondent to cease and desist from such unlawful
18 employment practice or unlawful discrimination and to take such
19 affirmative action, including, but not limited to, hiring,
20 reinstatement or upgrading of employees, with or without back pay,
21 or restoration to membership, in any respondent labor organization,
22 or extending full and equal accommodations, advantages, facilities,
23 and privileges to all persons, as, in the judgment of the director, will
24 effectuate the purpose of this act, and including a requirement for
25 report of the manner of compliance. If the conduct violative of this
26 act constitutes any form of unlawful economic discrimination
27 prohibited in ~~section 11, subsections~~ subsection 1., m., and or
28 n. of this act, ~~section 11 of P.L.1945, c.169 (C.10:5-12), or any~~
29 form of unlawful employment practice prohibited by subsection r.
30 or t. of section 11 of P.L.1945, c.169 (C.10:5-12), the affirmative
31 action taken by the director may include the award of three-fold
32 damages to the person or persons aggrieved by the violation. The
33 director shall have the power to use reasonably certain bases,
34 including but not limited to list, catalogue or market prices or
35 values, or contract or advertised terms and conditions, in order to
36 determine particulars or performance in giving appropriate remedy.
37 In addition to any other remedies provided by P.L.1945,
38 c.169 (C.10:5-1 et seq.), a prevailing complainant may recover
39 damages to compensate for emotional distress caused by the
40 activities found to be in violation of P.L.1945, c.169 (C.10:5-1 et
41 seq.) to the same extent as is available in common law tort actions.
42 In any case in which the director, Attorney General, or appropriate
43 organization is a complainant, on behalf of named or unnamed
44 individuals or a class of individuals, any of the remedies or relief
45 allowed by this act may be awarded or applied to the named or
46 unnamed individual victims of discrimination. If, upon all
47 evidence, the director shall find that the respondent has not engaged
48 in any such unlawful practice or unlawful discrimination, the

1 director shall state his findings of fact and conclusions of law and
2 shall issue and cause to be served on the complainant an order
3 dismissing the said complaint as to such respondent.

4 (cf: P.L.2003, c.180, s.16)

5

6 ²[3.] 5.² (New section) a. Any employer, regardless of the
7 location of the employer, who enters into a contract with a public
8 body to provide qualifying services to the public body shall provide
9 a report to the Commissioner of Labor and Workforce
10 Development, in a form issued by regulation promulgated by the
11 commissioner, of information regarding the ²compensation and
12 hours worked by employees categorized by² gender, race, ²[job
13 title] ethnicity², ²[occupational] and job² category ²[, and total
14 compensation of every employee of the employer employed in the
15 State in connection with the contract]². ²[The employer shall
16 provide the commissioner, throughout the duration of the contract
17 or contracts, with an update to the report each time there is a
18 significant change in any of the information that the employer is
19 required to report pursuant to this section, or other significant
20 change in employment status, including, but not limited to, medical
21 leave of 12 weeks or more, hiring, termination for any reason, a
22 change in part-time or full-time status, or a change in “employee”
23 or “contractor” status] Data regarding compensation and hours
24 worked by employees shall be reported in the form by pay bands to
25 be established by regulation promulgated by the commissioner. The
26 commissioner may establish a standard presumption for the number
27 of hours worked by a fulltime employee or by a part-time employee
28 for whom an employer does not track actual hours worked. An
29 employer shall provide a report for each establishment of the
30 employer².

31 b. Any employer, regardless of the location of the employer,
32 who enters into a contract with a public body to perform any public
33 work for the public body shall provide to the commissioner, through
34 certified payroll records required pursuant to P.L.1963, c.150
35 (C.34:11-56.25 et seq.), information regarding the gender, race, job
36 title, occupational category, and rate of total compensation of every
37 employee of the employer employed in the State in connection with
38 the contract. The employer shall provide the commissioner,
39 throughout the duration of the contract or contracts, with an update
40 to the information whenever payroll records are required to be
41 submitted pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

42 c. The commissioner shall retain the information provided by
43 the employer during any period of time that one or more contracts
44 are in effect between the employer and any public body and not less
45 than five years after the end of that period. The retained
46 employment information shall be made available by the
47 commissioner to the Division on Civil Rights in the Department of

1 Law and Public Safety, and, upon request, provided to anyone who
2 is or was an employee of the employer during the period of any of
3 the contracts between the employer and any public body, or any
4 authorized representative of the employee.

5 d. For the purposes of the section:

6 “Public body” means the State or any agency or instrumentality
7 of the State;

8 “Public work” means public work as defined in section 2 of
9 P.L.1963, c.150 (C.34:11-56.26) and which is subject to the
10 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). Public work
11 shall not include the provision of goods or products.

12 “Qualifying services” means the provision of any service to the
13 State or to any other public body, except for public work as defined
14 in section 2 of P.L.1963, c.150 (C.34:11-56.26).

15 “Service” means any act performed in exchange for payment,
16 including the provision of professional services, but shall not
17 include the sale of goods or products.

18

19 ²[4.] 6.² This act shall take effect ²[immediately] on July 1,
20 2018².