

Management Alert



New Jersey Assembly Advances Gender-Based Pay Equality Bill

The New Jersey General Assembly will now consider the Unfair Wage Recovery Act (A4124). Assemblywoman Pamela R. Lampitt (D-Burlington) reintroduced the bill designed to eliminate gender-based pay disparity after Governor Chris Christie conditionally vetoed similar legislation in 2012.

The reintroduced bill seeks to bring New Jersey law into alignment with the federal Lilly Ledbetter Fair Pay Act of 2009, which provides that an unlawful discriminatory compensation occurs each time an employee receives a paycheck. Specifically, the federal law makes clear that discrimination claims “accrue” whenever an employee receives a paycheck affected by past discrimination; is subject to a discriminatory practice or decision; or is otherwise affected by the discriminatory practice or decision. The intent of the federal law is to ensure that an employee is not penalized and time-barred from bringing pay equity discrimination claims when an employee may have been unaware of the disparate pay and preserves the employee’s right to challenge pay discrimination that is compounded over the years by raises, pensions, and other elements of compensation.

The federal law provides a two-year statutory limit for recovery. That is, a claimant can recover back pay for up to two years preceding the filing of a discrimination charge where the unlawful practice or decision occurred within the filing period. The New Jersey bill, however, does not specifically provide a statute of limitations period. Rather, it seeks to make “each paycheck another instance of the discriminatory compensation decision or other practice and therefore a new or continuing violation.” Clearly, the New Jersey bill, as written, presents concerns for employers who could potentially be defending stale pay discrimination claims that occurred in the distant past (although the bill claims that it does not seek to “weaken, obstruct, or eliminate any potential equitable application of the ‘discovery rule’ . . . or affect any applicable statute of limitations.”) We will continue to track this bill.

Reminder About Related Legislation

We also want to remind you of the so-called Pay Equality Poster and Notice Law (A2647) signed into law by Governor Christie on September 21, 2012. That law requires employers, with 50 or more employees, to conspicuously post and distribute a notice (to be drafted by the New Jersey Department of Labor (“the NJDOL”)) of the right to be free from gender-based pay discrimination. There is a lack of clarity on whether the “50 or more employees” pertains to 50 or more employees working within the state of New Jersey or 50 or more employees comprising the entire workforce anywhere in the United States with some number of employees in New Jersey. Until there is clarity, we recommend employers with operations in New Jersey, regardless of the number of employees working within the state, comply with the law.

Although the law was passed in 2012, the NJDOL has yet to issue the form of notice. The law requires covered employers to distribute the notice:

- to all employees no later than 30 days after it is issued by the NJDOL;
- at the time of the employee’s hiring;

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- to all employees annually on or before the 31st of each year; and
- at the request of an employee.

Employers may distribute notice by the following means:

- Email;
- Printed material “including but not limited to, a pay check insert, brochure or similar informational packet provided to new hires, an attachment to an employee manual or policy book; or flyer distributed at an employee meeting; or”
- The internet or intranet website “if the site is for the exclusive use of all workers, can be accessed by all workers, and the employer provides notice to the workers of its posting.”

The notice must be accompanied by an acknowledgment of receipt (signed or e-verified) by the employee, which must be returned within 30 days of receipt of the notice (although it is not yet clear whether the acknowledgment requirement requires the employee to sign only once upon his/her hiring or every time the notice is distributed). Additionally, employers must post the notice in English and Spanish and any other language the employer believes is the first language of a significant number of its workforce.

No doubt, the law will add to the administrative burdens for employers who also have to provide notices for recordkeeping, the Family Medical Leave Act, and the Conscientious Employee Protection Act.

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