

Pay Equity Issues & Insights Blog



New Jersey Legislature Fist Pumps for Pay Equity

By Maria Papasevastos and Nadia Bandukda

On Monday, the New Jersey Assembly approved a pay equity bill that would amend the New Jersey Law Against Discrimination to strengthen protections against pay discrimination in the workplace.

The bill already passed the Senate last month, and is now being sent to Governor Christie's desk. While Christie has vetoed or conditionally vetoed similar pay equity bills in the past, he has yet to comment on the current legislation.

If signed into law, the bill would impact New Jersey employers in several significant ways:

First, the bill makes it an unlawful employment practice for an employer to discriminate on the basis of sex by paying a different rate of compensation for "substantially similar work," when viewed as a composite of skill, effort and responsibility. Thus, similar to the recently-enacted California Fair Pay Act, the New Jersey law would allow employees to be compared even if they do not hold the "same" job, as long as their work is "substantially similar."

Second, the bill states that comparisons of employee wage rates will be based on wage rates in all of an employer's operations or facilities, and does not set any geographic or other limitations. This is also similar to the California law, which allows employees to be compared even if they do not work in the same establishment.

Third, the bill provides that any pay differential would only be permitted if the employer demonstrates that the differential is made pursuant to a seniority or merit system, or, alternatively, if the employer proves each of the following requirements:

1. The differential is based on a bona fide factor other than sex, such as training, education or experience, or the quantity or quality of production;
2. The factor or factors do not perpetuate a sex-based differential in compensation;
3. Each of the factors is applied reasonably;
4. 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 legitimate business necessity. However, the factor will be disallowed if there are alternative business practices that would serve the same business purpose without producing the wage differential.

Fourth, the bill, which is modeled after the Lilly Ledbetter Fair Pay Act ("Lilly Ledbetter"), makes each paycheck another instance of discrimination. In addition, while Lilly Ledbetter sets a two-year cap on back pay, the New Jersey bill goes further to provide that, where the violation has been continuous, an aggrieved employee may obtain back pay for the entire period of time in which the violation occurred, as long as the violation continued to occur within the two-year statute of limitations. An employer also cannot require an employee to agree to a shortened statute of limitations or waive any of the protections provided by the law.

Finally, the bill prohibits retaliation against employees who disclose information regarding their (or any other current or former employee's) job title, occupational category or rate of compensation, including benefits, if the purpose of the request for information is to assist in investigating potential discriminatory treatment in pay.

Given the trend of pay equity hitting the nation, including such laws going into effect in New York and California (see our prior alert on New York's pay equity law [here](#), our alert on the California Fair Pay Act [here](#), our alert on the Massachusetts Attorney General investigations on compliance with the Massachusetts Equal Pay Act [here](#), and our alert on the EEOC's proposed pay report [here](#)), it is crucial that employers consider pay equity auditing to keep abreast of their internal pay trends and ensure compliance with these laws.

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