

New Jersey Enacts Sweeping Equal Pay Law

May 7, 2018

By [Maxine Neuhauser](#) and [Gregory D. Green](#)

On April 24, 2018, New Jersey Governor Phil Murphy signed into law the [Diane B. Allen Equal Pay Act](#) (“Equal Pay Act” or “Law”), which is designed to guarantee pay equity and eliminate discrimination in pay for all employees protected by the New Jersey Law Against Discrimination (“LAD”), not just women. The Law also expands certain reporting obligations of New Jersey public contractors.

With its enactment, this bipartisan legislation has become the country’s strongest pay discrimination law. The Law has broad application and carries the potential for significant exposure.

Substantially Similar Work

The Equal Pay Act, which goes into effect on July 1, 2018, amends the LAD and makes it unlawful for an employer to discriminate against employees who are members of a protected class by paying them “at a rate of compensation, including benefits, which is less than the rate paid by the employer to employees who are not members of the protected class for substantially similar work, when viewed as a composite of skill, effort and responsibility.”

Under the Law, an employer may pay a different rate of compensation to a covered employee only if the employer demonstrates that the differential is made pursuant to a seniority or merit system or the employer demonstrates that:

1. the differential is based on one or more legitimate, 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 factor or factors are not based on, and do not perpetuate a differential in compensation based on, sex or any other characteristic of members of a protected class;
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 a legitimate business necessity, and there are no alternative business practices that would serve the same business purpose without producing the wage differential.

Employers should also be aware of the following:

- Wage rates in *all* of an employer's operations or facilities can be used for determining compensation differentials.
- An employer may not reduce any employee's rate of compensation to remedy a violation of the Law.
- An employer may not require applicants or employees to agree to (i) a limitations period that is shorter than the LAD's two-year statute of limitations or (ii) waive other protections provided by the LAD.

Remedies for Violations

Under the Equal Pay Act, in addition to other remedies provided by the LAD, employers may be liable for triple back-pay damages for up to six years, provided that a violation occurred during the two-year statute of limitations period.

Extended LAD Protections for State Contractors

In addition to their current reporting obligations, effective July 1, 2018, employers that contract with the State or other public bodies will be required to provide a report to the Department of Labor and Workforce Development ("DOL") showing compensation and hours worked by employees categorized by gender, race, ethnicity, and job category, and total compensation. The information is not limited to just those employees employed in connection with the public contract.

The Law mandates that the data be reported on a form to be prepared by the DOL. In addition, data regarding compensation and hours worked must be reported on the form by pay bands, which will also be established by DOL. The information will be retained by the Commissioner of Labor and Workforce Development and made available to the Division of Civil Rights upon request.

What New Jersey Employers Should Do Now

- Review wages and benefits with the assistance of legal counsel to determine whether compensation adjustments may be required to comply with the Law.

- Review job descriptions and pay ranges with the assistance of legal counsel to determine whether adjustments may be required to comply with the law.
- Ensure that recruiters and other human resource professionals are aware of, and receive training on, the Equal Pay Act.
- If you are a government contractor, make sure that you have a system in place to provide the additional employee data that is required by the Law.

* * * *

For more information about this Advisory, please contact:

Maxine Neuhauser
Newark
973-639-8269
mneuhauser@ebglaw.com

Gregory D. Green
Newark
973-639-8535
ggreen@ebglaw.com

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.

About Epstein Becker Green

Epstein Becker & Green, P.C., is a national law firm with a primary focus on health care and life sciences; employment, labor, and workforce management; and litigation and business disputes. Founded in 1973 as an industry-focused firm, Epstein Becker Green has decades of experience serving clients in health care, financial services, retail, hospitality, and technology, among other industries, representing entities from startups to Fortune 100 companies. Operating in locations throughout the United States and supporting domestic and multinational clients, the firm's attorneys are committed to uncompromising client service and legal excellence. For more information, visit www.ebglaw.com.