

# New Jersey Equal Pay Act Signed Into Law

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On Tuesday, April 24, 2018, New Jersey Governor Phil Murphy signed into law the Diane B. Allen Equal Pay Act (the “[Act](#)”), which amends the New Jersey Law Against Discrimination (“NJLAD”) to provide enhanced equal pay protections for New Jersey employees. The Act, which becomes effective on July 1, 2018, prohibits pay disparities based upon characteristics protected by the NJLAD, such as race, creed, color, national origin, nationality, ancestry, age, sex, etc. Specifically, the Act makes it an unlawful employment practice “[f]or an employer to pay any of its employees who is a member of a protected class 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.”

The Act further provides that, other than instances where a seniority or merit based system is utilized, employers may only pay employees a different rate of compensation for substantially similar work if the employer can show that:

1. The pay differential is based on one or more legitimate, bona fide factors, such as training, education or experience, or the quantity or quality of production;
2. The bona fide factors are not based on, and do not perpetuate a differential in compensation based on sex, or any other protected characteristic;
3. Each of the bona fide factors are applied reasonably;
4. One or more of the bona fide factors account for the entire wage differential;

and

5. The bona fide factors are job-related with respect to the position in question and based on legitimate business necessities. However, a bona fide factor based on business necessity would not apply “if it is demonstrated that there are alternative business practices that would serve the same business purpose without producing the wage differential.”

The Act also extends NJLAD’s anti-retaliation provisions to equal pay claims. Specifically, the Act prohibits retaliation against employees for “requesting from, discussing with, or disclosing to, any other employee or former employee of the employer, a lawyer from whom the employee seeks legal advice, or any government agency” equity pay information. Such equity pay information includes job title, occupational category, rate of compensation, including benefits, and the gender, race, ethnicity, military status, or national origin of the employee or any other employee or former employee, regardless of whether the employee receives a response.

The Act also increases recoverable damages, and extends the statute of limitations for pay equity violations to six years. Specifically, employees may be able to recover treble damages if they can show they were discriminated against on the basis of pay, if they were retaliated against for raising the issue of pay disparity to an employer or other employees, or if they were required to waive their rights to complain about pay disparities. An employee may also be able to recover punitive damages if a court finds that an employer’s conduct was willful. The Act further provides that each payment of unlawfully disparate wages or other compensation constitutes a separate offense.

In light of the Act’s expansive scope, New Jersey employers should review their existing pay policies and practices to ensure that employees are receiving equal pay for performing substantially similar work. If any issues are uncovered during this review, employers should take steps to remedy any differences that could be attributed to membership in a protected class, so as to avoid running afoul of the Act.

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