

Amendment to New Jersey Law Against Discrimination Provides Protection for Employees Investigating Pay Inequity

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By Julie Saker Schlegel

A recent amendment to the New Jersey Law Against Discrimination (“NJLAD”) prohibits employers from retaliating against employees who request certain information from co-workers regarding their salary, benefits, or other job information for the purpose of uncovering potential pay discrimination.

Specifically, on August 29, 2013, Governor Chris Christie signed into law [Assembly Bill A2648](#), which permits employees to ask current or former co-workers about their job title, occupational category, salary, benefits, and membership in protected classes (e.g., gender, race, ethnicity, military status, or national origin) without fear of reprisal, provided that the purpose of the request is to investigate or take legal action regarding potential discriminatory treatment pertaining to salary, bonuses, or benefits. This amendment became effective upon its signing.

Retaliation is prohibited regardless of whether the individual(s) involved actually respond to the request for information. Further, the law makes clear that individuals are not required to disclose their salary or other information in response to such a request.

While this particular New Jersey law limits the circumstances under which employees may ask about co-workers’ salary and other job information without reprisal, under federal law (in particular, pursuant to the National Labor Relations Act (“NLRA”)), employee discussions about the terms and conditions of employment, including salary, are considered [protected concerted activity](#). The NLRA applies to both union and non-union employees, nationwide.

New Jersey employers should be reminded that this amendment to the NJLAD follows last year’s [amendment to the New Jersey Equal Pay Act \(“EPA”\)](#), which requires New Jersey employers with 50 or more employees to provide written notification of employees’ right to be free from gender discrimination in salary, benefits, and other terms and conditions of employment. Once the gender equity posting requirements become effective, employers will be required to post such notification in conspicuous locations available to all workers in each of the employer’s facilities. While the EPA amendment was passed in 2012, the posting and notification requirement does not become effective until the New Jersey Department of Labor and Workforce

Development has issued the required form of notice. A [proposed form of notice](#) was published in January 2013, but has not yet been adopted.

What Employers Should Do Now

- Review company policies regarding confidentiality to ensure that they do not prohibit employees from discussing their compensation, benefits, or other job information with current or former co-workers, or otherwise engaging in potentially protected concerted activity.
- Ensure that managers, human resources personnel, and others are aware that employees should not be prohibited from discussing salary, benefits, or other terms and conditions of employment.
- Monitor the [New Jersey Department of Labor and Workforce Development's website](#) for further updates regarding the effective date of the gender equity poster and notification requirement.

For more information about this Advisory, please contact:

Julie Saker Schlegel
Newark
973.639.8540
jschlegel@ebglaw.com

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