

ANDERSON KILL EMPLOYMENT LAW INSIDER

ALERT

New Jersey Legislature Passes Tough New Pay Equity Law

By Bennett Pine

On March 26, 2018, the New Jersey State Legislature, controlled by Democrats, passed a new pay equity law that will offer protections to women that are among the strongest in the nation. Gov. Phil Murphy is expected to sign the bill into law shortly.

Background

A nationwide study showed that women typically earn about 80% of what men do for the same job. For women of color, the disparity worsens. African-American women earn just 58 cents for every dollar a white male earns; Latina women earn only 43 cents to the white-male dollar.

Every U.S. state except Alabama and Mississippi has an equal pay law. In recent times, California, Colorado, Delaware, Nevada, Oregon, Washington and Puerto Rico have enacted tougher pay equity laws.

A number of states and municipalities also recently enacted laws preventing employers from inquiring into the “salary history” of job applicants, because such inquiries are seen as perpetuating compensation disparities between men and women.

The New Law

Easier Test to Prove: The New Jersey law should make it easier for women and minorities to win pay discrimination cases. Under the previous version of the law, the test was unequal pay for “substantially equal” work. Workers will now have to show they were paid unequally for “substantially similar” work.

Longer Recovery Periods: The new law expands to six years from two years the period of back pay that employers would owe if found to have engaged in pay discrimination.

Higher Damages: An employer found guilty of pay discrimination would have to pay triple the total amount of damages awarded to the employee.

State Contractors: Companies granted contracts with New Jersey state agencies would be required to prepare and submit compensation reports

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comparing the pay of women and minority employees to that of other workers within the same job categories and pay bands.

Procedure: The new law amends the New Jersey Law Against Discrimination by making it unlawful for an employer to discriminate against workers who are members of a protected class by paying them less compensation, including benefits, than employees who are not in that class for "substantially similar" work, when viewed as a composite of skill, effort and responsibility.

The applicable statute of limitations for claims would restart with each paycheck, in effect creating "rolling" violations.

Employer Defenses: Under the new law, an employer may pay employees at different rates of compensation if the employer can demonstrate that the difference is based on a seniority or merit system, or other legitimate job-related factors such as training, education or experience, provided they do not perpetuate a sex-based differential in compensation.

No Retaliation: Employers would be prohibited from taking reprisals against an employee for requesting, disclosing or discussing information about job titles, occupational categories, and rate of compensation of any current or former employee, or requiring employees or prospective employees to forego the right to discuss or request compensation information.

Overwhelming Passage: The new law passed the New Jersey Assembly by a vote of 74-2, and the New Jersey Senate by a 35-0 vote.

Gov. Murphy – Strong Proponent: Gov. Murphy, a Democrat, is seen as a driving force behind the new pay equity law. His first official act as governor was to sign an executive order promoting equal pay for women by prohibiting the state government from asking job applicants about their salary history.

By contrast, similar versions of the law were vetoed by his predecessor, Gov. Chris Christie, on three separate occasions.

Effective Date

The law will take effect on July 1, 2018. Gov. Murphy's signature is expected shortly.

Conclusion

The new pay equity law will certainly result in a large number of wage discrimination claims for New Jersey employers — from women employees to be sure, but from members of other protected groups as well.

If nothing else, the new legislation will result in a major compliance headache as New Jersey employers will be forced to examine the fairness of their pay systems for women and other protected groups. More and more states are expected to pass similar pay equity legislation, making it easier for women and other protected groups to bring and prevail on pay discrimination claims against their employers.

Stay tuned!!▲

