

New Jersey's New Equal Pay Act Extends Beyond the Workplace

by Leonard S. dePalma, Esq.

New Jersey's new equal pay law, The "Diane B. Allen Equal Pay Act" (the "Act") which takes effect on July 1, 2018, amends the NJ Law Against Discrimination. The Act protects people from being unfairly paid less than another person, not in the employee's protected class, for "substantially similar work", strengthens protections against employment discrimination, and promotes equal pay for women. The Act also has provisions that extend beyond employment law and affect, for example, the purchase and leasing of real property.

New Protections Against Discrimination

The new law makes it an unlawful employment practice for an employer to refuse to hire or employ, or to bar or to discharge, or to require a person to retire "because of the race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer" (unless justified by lawful considerations other than age). The Act also makes it unlawful to discriminate against such individuals in compensation or in terms, conditions or privileges of employment.

The Act provides for exceptions to the new unlawful discrimination rules. For example, "it shall not be an unlawful employment practice to refuse to accept for employment an applicant who has received a notice of induction or orders to report for active duty in the armed forces". Likewise, nothing in the Act bars an employer from refusing to accept for employment any person on the basis of sex in those certain circumstances where sex is a bona fide occupational qualification, reasonably necessary to the normal operation of the particular business or enterprise. In addition, the Act states that an employer may refuse to accept for employment or to promote any person over 70 years of age.



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the Advocate

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The Act provides it shall not be an unlawful employment practice for a club exclusively social or fraternal to use club membership as a uniform qualification for employment, or for a religious association or organization to utilize religious affiliation as a uniform qualification in the employment of clergy, religious teachers or other employees engaged in the religious activities of the association or organization, or in following the tenets of its religion in establishing and utilizing criteria for employment of an employee.

The Act prohibits reprisals against any person who has opposed any practices or acts forbidden under the Act or because that person has sought legal advice regarding rights under the Act, shared relevant information with legal counsel, shared information with a governmental entity, or filed a complaint, testified or assisted in any proceeding under the Act. It also prohibits any person from attempting to coerce, intimidate, threaten or interfere with the exercise or enjoyment of, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Act.

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"Employment is nature's physician, and is essential to human happiness."

- Galen

"Work is man's most natural form of relaxation."

- Dagobert Runes

"Work is the grand cure of all the maladies and miseries that ever beset mankind."

- Thomas Carlisle

New Equal Pay Legislation

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Other exceptions exist within the Act whereby an employer may pay an employee 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. Specifically, an employer may pay a different rate of compensation only if the employer demonstrates that the differential is made pursuant to a seniority system, a merit system, or the employer demonstrates:



- (1) That 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) That the factor or factors are not based on, and do not perpetuate differential in compensation based on sex or any other characteristic of members of a protected class;;
- (3) That each of the factors is applied reasonably;
- (4) That one or more of the factors account for the entire wage differential; and
- (5) That the factors are job-related with respect to the position in question and based on a legitimate business necessity.

Treble Damages of Underpaid Amounts

The Act provides that a violation of the law occurs with “each occasion that an individual is affected by application of a discriminatory compensation decision or other practice, including, but not limited to, each occasion that wages, benefits, or other compensation are paid, resulting in whole or in part from the decision or other practice” Thus a new claim may arise with each paycheck an employee receives that violates the Act.

When a violation is proved, the Division of Civil Rights or a court is required to award treble damages so that the employee will recover three times the amount of the underpayment. Specifically, the Act states: “if a jury determines that an employer is

guilty of an unlawful employment practice prohibited by subsection r. or t. of section 11 of P.L.1945, c.169 (C.10:5-12), the judge shall award three times any monetary damages to the person or persons aggrieved by the violation.”

The Act also provides that an employee can recover back pay as far back as six years.

Provisions Affecting Real Estate Transactions

The law also extends rights to persons seeking to purchase or lease real property. The Act prohibits any person including any owner, lessee, sublessee, assignee or managing agent:, based upon race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, or source of lawful income used for rental or mortgage payments

- (1) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof;
- (2) To discriminate against any person or group of persons;
- (3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment or sublease of any real property or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property, or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination;
- (4) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof; or
- (5) To refuse to rent or lease any real property to another person because that person's family includes children under 18 years of age, or to make an agreement, rental or lease of any real property which provides that the agreement, rental or lease shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c.169 (C.10:5-5).

In conclusion, please note that the Act is not limited only to the provisions discussed in this article. Employers should review their current compensation practices to ensure they do not violate this new law. For more information about how this legislation could affect you and your workplace, please contact The dePalma Law Firm.