

Equal Pay and Gender Equality Prioritized By Governor Murphy

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In June 2017, the New Jersey Legislature passed A3480, a bill that would have prohibited all employers in the State from requesting a prospective employee provide his/her salary history. To ensure compliance, the bill allowed individuals to file discrimination lawsuits against employers under the New Jersey Law Against Discrimination. This bill was vetoed by Governor Christie on July 31, 2017, based on his belief that the bill would "punish, as discriminatory, otherwise innocuous conduct done with neither discriminatory intent nor a discriminatory impact." While the bill did not become law in 2017, it appears Governor Christie's veto may have only delayed its enactment.

Governor Murphy was sworn into office on January 16, 2018. During his inauguration, he declared that he plans to "begin the process of bulldozing the roadblocks that have kept women from being paid fairly, that have kept many women of color from fulfilling their dreams of entering the middle class, and that have allowed our wage gap to persist." Therefore, as his first official act in office, he signed Executive Order #1, which he indicated was his starting point for combating gender inequality and promoting equal pay for women in New Jersey.

In the Executive Order, the Governor cited to studies that showed that in New Jersey, women working full-time earn, on average, 82 cents for every dollar earned by men in full-time positions. That disparity grows to 58 cents for Black women and to 43 cents for Latinas. Therefore, to combat these statistics, the Executive Order prohibits State entities from inquiring into a job applicant's salary history. While the Order only applies to "State entities" -- because it had not gone through the legislative process -- Governor Murphy made clear that he plans to sign legislation that would expand these protections to all employees in the State, describing the Executive Order as his "first meaningful step towards gender equity and fighting the gender pay gap."

What's New?

The Executive Order is scheduled to take effect on February 1, 2018. It prohibits State entities from inquiring into a job applicant's current or previous salaries, until the entity has made a conditional offer of employment and provided its compensation package. It further prevents the employer from searching public records databases to ascertain an applicant's salary history and requires the employer to take all reasonable measures to avoid inadvertently discovering a potential employee's salary history. However, nothing in the law prevents job applicants from volunteering previous compensation information, at which point, public entities may verify this information.

The Executive Order's authority is limited to "State entities." At the present time, private employers and local governmental entities are not impacted. Instead, the Executive Order only applies to the Executive Branch and the Executive Branch's agencies, authorities, boards, bureaus, commissions, divisions, institutions, offices, or any independent State authority, commission, instrumentality, or agency over which the Governor exercises executive authority.

Presently, employees cannot file a lawsuit for violations of the Executive Order. Instead, the only remedy is to report the violation to the Governor's Office of Employee Relations.

What Actions do Employers Need to Take?

State entities: State entities should update their policies to ensure consistency with the Executive Order's requirements. In addition, these entities immediately should provide training to their managers to prevent any violations.

Private employers & local governmental bodies: Just as when the Legislature passed A3480, the Legislature today remains Democratic-controlled. Therefore, all employers should begin preparing for likely changes to the law that would prohibit any inquiries into prospective employees' salary histories.